

KFN
5365
A45
S25

CORNELL UNIVERSITY LAW LIBRARY

The Moak Collection

PURCHASED FOR

The School of Law of Cornell University

And Presented February 14, 1893

IN MEMORY OF

JUDGE DOUGLASS BOARDMAN

FIRST DEAN OF THE SCHOOL

By his Wife and Daughter

A. M. BOARDMAN and ELLEN D. WILLIAMS

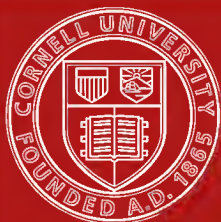
Cornell University Library
KFN5365.A45S25

Bankruptcy practice under the law of the



3 1924 021 908 235

law



Cornell University Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

BANKRUPTCY PRACTICE

UNDER THE

LAW OF THE UNITED STATES OF 1867;

TOGETHER WITH

THE AMENDATORY ACT OF 1868, THE GENERAL ORDERS,
FORMS, RULES OF THE SOUTHERN DISTRICT OF
NEW YORK,

THE RULES OF THE CIRCUIT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, IN
THE SECOND CIRCUIT;

AND A

DIGEST OF ALL THE DECISIONS THEREUNDER,

TO SEPTEMBER, 1868.

ANNOTATED.

BY

THORNDIKE SAUNDERS,
COUNSELOR AT LAW AND SOLICITOR IN BANKRUPTCY.

NEW YORK:
DIOSY & COMPANY,
LAW BOOK PUBLISHERS.
1868.

M. 11.716.

[Entered, according to Act of Congress, in the year One Thousand Eight Hundred and Sixty-Eight, by DIOSY & COMPANY, in the Clerk's Office of the District Court for the Southern District of New York.]

CONTENTS.

	Page.
ACT OF 1867,	5
AMENDATORY ACT OF 1868,	79
GENERAL ORDERS OF SUPREME COURT,	83
FORMS IN BANKRUPTCY,	93
RULES IN EQUITY NOTICED,	182
RULES OF SOUTHERN DISTRICT OF NEW YORK,	183
RULES OF CIRCUIT COURT, SOUTHERN DISTRICT OF NEW YORK, SECOND CIRCUIT,	193
INDEX TO PRACTICE,	227
INDEX TO RULES SOUTHERN DISTRICT NEW YORK,	236
INDEX TO CIRCUIT COURT RULES,	238
TABLE OF CASES,	242

ABBREVIATIONS

PECULIAR TO THIS WORK.

<i>B. R.</i> ,	.	.	.	BANKRUPT REGISTER.
<i>Int. Rev. Rec.</i> ,	.	.	.	INTERNAL REVENUE RECORD.
<i>B. G.</i> ,	.	.	.	BANKRUPT GAZETTE.
<i>N. D.</i> ,	.	.	.	NORTHERN DISTRICT.
<i>E. D.</i> ,	.	.	.	EASTERN DISTRICT.
<i>W. D.</i> ,	.	.	.	WESTERN DISTRICT.
<i>S. D.</i> ,	.	.	.	SOUTHERN DISTRICT.

Other contractions are in the ordinary forms.

Cases from the *Bankrupt Register* have been cited with the number of the volume in some instances *following* the name of the work, thus—
“Sherburne, *E. D. Mo., B. R.*, 1, 155,”—*i. e.*, Sherburne, *Eastern District of Missouri, Bankrupt Register*, vol. 1, page 155.

BANKRUPTCY PRACTICE.

THE ACT OF 1867.

COURTS OF BANKRUPTCY.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the several district courts of the United States be, and they hereby are, constituted courts of bankruptcy, and they shall have original jurisdiction in their respective districts in all matters and proceedings in bankruptcy, and they are hereby authorized to hear and adjudicate upon the same according to the provisions of this act. The said courts shall be always open for the transaction of business under this act, and the powers and jurisdiction hereby granted and conferred shall be exercised as well in vacation as in term time, and a judge sitting in chambers shall have the same powers and jurisdiction, including the power of keeping order and punishing any contempt of his authority, as when sitting in court. And the jurisdiction hereby conferred shall extend to all cases and controversies arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy; to the collection of all the assets of the bankrupt; to the ascertainment and liquidation of the liens and other specific claims thereon; to the adjustment of the various priorities

Jurisdiction, where and what.

and conflicting interests of all parties ; and to the marshaling and disposition of the different funds and assets, so as to secure the rights of all parties and due distribution of the assets among all the creditors ; and to all acts, matters, and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy. The said courts shall have full authority to compel obedience to all orders and decrees passed by them in bankruptcy, by process of contempt and other remedial process, to the same extent that the circuit courts now have in any suit pending therein in equity. Said courts may sit for the transaction of business in bankruptcy at any place in the district, of which place, and the time of holding court, they shall have given notice, as well as at the places designated by law for holding such courts.

May compel
by process
of contempt

Sit any
where in
district.

Interference with State law, exists only where case arises after law of United States goes into operation. Commonwealth *ex rel.* James Millingar *v.* Michael O'Hara, *Dist. Alleghany Pa., Int. Rev. Rec.*, VI., 125.

Jurisdiction, superior and exclusive. Barrows *et al*, *La., B. R.*, 1, 123; Loeb, *Same*; Winter, *Same*.

District court may entertain bill in equity for injunction restraining judgment creditors from selling estate levied on. But this jurisdiction not exclusive. Bowie, *Id.*, *B. R.*, 1, 186.

Jurisdiction confined to the district. So, where injunction alleged to have been violated in district other than where it is issued, attachment refused. Hirsch, *E. D. N. Y., B. R.*, 2, 1.

Jurisdic-
tion, circuit
courts.

How mat-
ters to be
brought.

SEC. 2. *And be it further enacted,* That the several circuit courts of the United States within and for the districts where the proceedings in bankruptcy shall be pending shall have a general superintendence and jurisdiction of all cases and questions arising under this act ; and, except when special provision is otherwise made, may, upon bill, petition, or other proper process, of any party aggrieved, hear and determine the case as a court of equity. The powers and jurisdiction

hereby granted may be exercised either by said court, or by any justice thereof, in term time or vacation. Said circuit courts shall also have concurrent jurisdiction with the district courts of the same district, of all suits at law or in equity, which may or shall be brought by the assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of said bankrupt transferrable to or vested in such assignee; but no suit at law or in equity shall, in any case, be maintainable by or against such assignee, or by or against any person claiming an adverse interest, touching the property and rights of property aforesaid, in any court whatsoever, unless the same shall be brought within two years from the time the cause of action accrued, for or against such assignee: *provided*, that nothing herein contained shall revive a right of action barred at the time such assignee is appointed.

Justice in
vacation
has power
of court.

Suits
against as-
signee limit-
ed. § 14.

This section refers to original jurisdiction only. O'Brien, *N. D. N. Y., Int. Rev. Rec.*, VI., 182.

Questions arising in progress of cause not to be appealed, but to be brought by petition stating points decided, that petitioner is aggrieved, and praying reversal. Reed, *Circ. Ct. N. D. Ohio, B. R.*, 2, 2.

OF REGISTERS.

SEC. 3. *And be it further enacted*, That it shall be the duty of the judges of the district courts of the United States within and for the several districts to appoint in each congressional district in said districts, upon the nomination and recommendation of the chief justice of the supreme court of the United States, one or more registers in bankruptcy, to assist the judge of the district court in the performance of his duties under this act. No person shall be eligible to such appointment un-

Registers,
how ap-
pointed.

- Qualifications.** less he be a counselor of said court, or of some one of the courts of record of the State in which he resides. Before entering upon the duties of his office, every person so appointed a register in bankruptcy shall give a bond to the United States, with
- Bond, F. 9.** condition that he will faithfully discharge the duties of his office, in a sum not less than one thousand dollars, to be fixed by said court, with sureties satisfactory to said court, or to either of the said justices thereof; and he shall, in open
- Oath, F. 8** court, take and subscribe the oath prescribed in the act entitled "An act to prescribe an oath of office, and for other purposes," approved July second, eighteen hundred and sixty-two; and also that he will not during his continuance in office be, directly or indirectly, interested in or benefited by the fees or emoluments arising from any suit or matter pending in bankruptcy in either the district or circuit court in his district.

- SEC. 4.** *And be it further enacted,* That every
- Power of register.** register in bankruptcy, so appointed and qualified, shall have power, and it shall be his duty, to make adjudication of bankruptcy, to receive the
- G. O. 4, 5, 7, 14. Rule S. D. N. Y., 4, 8.** surrender of any bankrupt, to administer oaths in all proceedings before him, to hold and preside at meetings of creditors, to take proof of debts, to make all computations of dividends, and all orders of distribution, and to furnish the assignee
- G. O. 8. F. 10.** with a certified copy of such orders, and of the schedules of creditors and assets filed in each case, to audit and pass accounts of assignees, to grant
- G. O. 4, 5, 6, 27. §§ 26, 27.** protection, to pass the last examination of any bankrupt in cases whenever the assignee or a creditor do not oppose, and to sit in chambers and despatch there such part of the administrative business of the court and such uncontested matters as shall be defined in general rules and orders, or as the district judge shall in any particular mat-

ter direct; and he shall also make short memoranda of his proceedings in each case in which he shall act, in a docket to be kept by him for that purpose, and he shall forthwith, as the proceedings are taken, forward to the clerk of the district court a certified copy of said memoranda, which shall be entered by said clerk in the proper minute-book to be kept in his office, and any register of the court may act for any other register thereof; *provided, however*, that nothing in this section contained shall empower a register to commit for contempt, or to hear a disputed adjudication, or any question of the allowance or suspension of an order of discharge; but in all matters where an issue of fact or of law is raised and contested by any party to the proceedings before him, it shall be his duty to cause the question or issue to be stated by the opposing parties in writing, and he shall adjourn the same into court for decision by the judge. No register shall be of counsel or attorney, either in or out of court, in any suit or matter pending in bankruptcy in either the circuit or district court of his district, nor in an appeal therefrom; nor shall he be executor, administrator, guardian, commissioner, appraiser, divider, or assignee, of or upon any estate within the jurisdiction of either of said courts of bankruptcy, nor be interested in the fees or emoluments arising from either of said trusts. The fees of said registers, as established by this act, and by the general rules and orders required to be framed under it, shall be paid to them by the parties for whom the services may be rendered in the course of proceedings authorized by this act.

G. O. 11.

G. O. 1.
F. 12.Not to com-
mit for con-
tempt, &c.Issues con-
tested to be
adjourned
into court.G. O. 11.
Rule S. D.
N. Y., 19.
§ 6.Not to be
attorney,
&c.Fees paid by
whom.§ 47. G. O.
12, 29, 30.

Register has power as to all matters where no contest exists. Where contest exists his decision is final, unless party requests certificate. Gettleston, *Cal.*, B. R., 1, 170; Patterson, *S. D. N. Y.*, *Int. Rev. Rec.*, VI., 127.

"Issues to be adjourned" are such as actually arise. *Pulver, S. D. N. Y.*, VI. *Int. Rev. Rec.*, 77; *Wright, Ky.*, 1 *B. R.*, 91; *Sturgeon, Ky.*, 1 *B. R.*, 131.

On certificate, register to give opinion. *Rule 19, S. D. N. Y., post.*

Registers have power to administer oaths in *all matters* where commissioners of the circuit courts have power so to do, and commissioners may take proofs of debt in all cases subject to revision by court or register. Act approved July 25, 1868, amending an act to establish a uniform system, &c.

Protection,—*i. e.*, from arrest. *Glasser, S. D. N. Y.*, 1 *B. R.*, 73.

Fees on deposition to be paid by creditor. *Mackintyre, S. D. N. Y.*, VI. *Int. Rev. Rec.*, 29.

On direct examination by party calling witness on cross-examination by other party. *Schofield, S. D. N. Y.*, 2 *B. R.*, 1.

Register to
be directed
by court.
§ 4. G. O.
5, 29, 30.

SEC. 5. *And be it further enacted*, That the judge of the district court may direct a register to attend at any place within the district, for the purpose of hearing such voluntary applications under this act as may not be opposed, of attending any meeting of creditors, or receiving any proof of debts, and, generally, for the prosecution of any bankruptcy or other proceedings under this act; and the traveling and incidental expenses of such register, and of any clerk or other officer attending him, incurred in so acting, shall be settled by said court, in accordance with the rules prescribed under the tenth section of this act, and paid out of the assets of the estate in respect of which such register has so acted; or if there be no such assets, or if the assets shall be insufficient, then such expenses shall form a part of the costs in the case or cases in which the register shall have acted in such journey, to be apportioned by the judge; and such register, so acting, shall have and exercise all powers, except the power of commitment, vested in the district court for the summoning and examination of persons or witnesses, and for requiring the production of books, papers, and documents: *provided always*, that all depositions of persons and witnesses taken

Traveling
fee. § 47.

G. O. 12.

Powers
over wit-
nesses.
§§ 7, 22, 26,
38, 43.
G. O. 2, 10.

before said register, and all acts done by him, shall be reduced to writing and be signed by him, and shall be filed in the clerk's office as part of the proceedings. Such register shall be sub-^{Subject to removal.}ject to removal by the judge of the district court, and all vacancies occurring by such removal, or by resignation, change of residence, death, or disability, shall be promptly filled by other fit persons, unless said court shall deem the continuance of the particular office unnecessary.

SEC. 6. *And be it further enacted*, That any party shall, during the proceedings before a register, be at liberty to take the opinion of the district judge upon any point or matter arising in the course of such proceedings, or upon the result of such proceedings, which shall be stated by the register in the shape of a short certificate to the judge, who shall sign the same if he approve thereof; and such certificate, so signed, shall be binding on all the parties to the proceeding; but every such certificate may be discharged or varied by the judge at chambers or in open court. In any bankruptcy, or in any other proceedings within the jurisdiction of the court under this act, the parties concerned, or submitting to such jurisdiction, may at any stage of the proceedings, by consent, state any question or questions in a special case for the opinion of the court; and the judgment of the court shall be final, unless it be agreed and stated in such special case that either party may appeal, if, in such case, an appeal is allowed by this act. The parties may also, if they think fit, agree, that upon the question or questions raised by such special case being finally decided, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, or any property, or the amount of any disputed debt or claim, shall be paid, delivered, or transfer-^{Party may take opinion of judge on certificate.}^{Form 50, G. O. 11.}^{Rule S. D. N. Y., 19.}^{Judgment to be final unless.}^{§ 8.}^{Costs on certificate.}

red by one of such parties to the other of them either with or without costs.

Question touching allowance of discharge, not capable of being certified; does not arise in the cause, &c. *Mawson, S. D. N. Y., B. R., 1, 33.*

Certificate can be taken only by party as bankrupt, creditor, or witness cited to answer for contempt. *Fredenburgh, S. D. N. Y., B. R., 1, 34.*

And only as to questions which actually arise. *Pulver* and other cases, § 4, cited.

SEC. 7. *And be it further enacted*, That parties and witnesses summoned before a register shall be bound to attend in pursuance of such summons at the place and time designated therein, and shall be entitled to protection, and be liable to process of contempt in like manner as parties and witnesses are now liable thereto in case of default in attendance under any writ of subpoena; and all persons willfully and corruptly swearing or affirming falsely before a register shall be liable to all the penalties, punishments, and consequences of perjury. If any person examined before a register shall refuse or decline to answer, or to swear to or sign his examination when taken, the register shall refer the matter to the judge, who shall have power to order the person so acting to pay the costs thereby occasioned, if such person be compellable by law to answer such question or to sign such examination, and such person shall also be liable to be punished for contempt.

Witness bound to attend, and entitled to protection. § 5, 22, 26, 33, 43. *S. O., 2, 10.*

Falseswearing punished.

Refusal to answer to be referred. § 4.

Costs and punishment.

OF APPEALS.

SEC. 8. *And be it further enacted*, That appeals may be taken from the district to the circuit courts in all cases in equity, and writs of error may be allowed to said circuit courts from said district courts in cases at law under the jurisdiction created by this act when the debt or damages claimed amount to more than five hundred dollars;

Appeals to circuit court, by whom.

and any supposed creditor, whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim, may appeal from the decision of the district court to the circuit court for the same district; but no appeal shall be allowed in any case from the district to the circuit court unless it is claimed, and notice given thereof to the clerk of the district court, to be entered with the record of the proceedings, and also to the assignee or creditor, as the case may be, or to the defeated party in equity, within ten days after the entry of the decree or decision appealed from. The appeal shall be entered at the term of the circuit court which shall be first held within and for the district next after the expiration of ten days from the time of claiming the same. But if the appellant in writing waives his appeal before any decision thereon, proceedings may be had in the district court as if no appeal had been taken, and no appeal shall be allowed unless the appellant at the time of claiming the same shall give bond in manner now required by law in cases of such appeals. No writ of error shall be allowed unless the party claiming it shall comply with the statutes regulating the granting of such writs.

G. O. 26.

Form 68,
adding
statement
required,
§ 24.Time limited
for ap-
peal.

May waive.

Bond to be
given.Writ of er-
ror, when.

Questions to be brought by petition, not by appeal. Reed, sec § 2.

SEC. 9. *And be it further enacted,* That in cases arising under this act no appeal or writ of error shall be allowed in any case from the circuit courts to the supreme court of the United States unless the matter in dispute in such case shall exceed two thousand dollars.

Appeal to
U. S. su-
preme
court.

G. O. 26

GENERAL ORDERS.

SEC. 10. *And be it further enacted,* That the justices of the supreme court of the United States

Gen. Orders to be made. subject to the provisions of this act, shall frame general orders for the following purposes :

G. O. 82. For regulating the practice and procedure of the district courts in bankruptcy, and the several forms of petitions, orders, and other proceedings to be used in said courts in all matters under this act ;

For regulating the duties of the various officers of said courts ;

For regulating the fees payable, and the charges and costs to be allowed, except such as are established by this act, or by law, with respect to all proceedings in bankruptcy before said courts, not exceeding the rate of fees now allowed by law for similar services in other proceedings ;

For regulating the practice and procedure upon appeals ;

For regulating the filing, custody, and inspection of records ;

And generally for carrying the provisions of this act into effect.

After such general orders shall have been so framed, they, or any of them, may be rescinded or varied, and other general orders may be framed in manner aforesaid, and all such general orders so framed shall, from time to time by the justices of the supreme court, be reported to Congress, with such suggestions as said justices may think proper.

VOLUNTARY BANKRUPTCY. — COMMENCEMENT OF PROCEEDINGS.

Who to apply. SEC. 11. *And be it further enacted*, That if any person residing within the jurisdiction of the United States, owing debts provable under this act exceeding the amount of three hundred dollars, shall apply by petition, addressed to the judge of the judicial district in which such debtor has resided or carried on business for the six months

G. O. 1, 3,
4, 6, 14, 27.

next immediately preceding the time of filing such petition, or for the longest period during such six months, setting forth his place of residence, his inability to pay all his debts in full, his willingness to surrender all his estate and effects for the benefit of his creditors, and his desire to obtain the benefit of this act, and shall annex to his petition a schedule, verified by oath before the court, or before a register in bankruptcy, or before one of the commissioners of the circuit court of the United States, containing a full and true statement of all his debts, and as far as possible, to whom due, with the place of residence of each creditor, if known to the debtor, and if not known, the fact to be so stated, and the sum due to each creditor, also the nature of each debt or demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued, and a statement of any existing mortgage, pledge, lien, judgment, or collateral or other security given for the payment of the same; and shall also annex to his petition an accurate inventory, verified in like manner, of all his estate, both real and personal, assignable under this act, describing the same, and stating where it is situated, and whether there are any, and, if so, what incumbrances thereon, the filing of such petition shall be an act of bankruptcy, and such petitioner shall be adjudged a bankrupt; *Provided*, that all citizens of the United States petitioning to be declared bankrupt, shall, in filing such petition, and before any proceedings thereon, take and subscribe an oath of allegiance and fidelity to the United States, which oath shall be filed and recorded with the proceedings in bankruptcy. And the judge of the district courts, or, if there be no opposing party, any register of said court, to be

F. 1-4. Rule
S. D. N. Y.,
1, 3.

What to al-
lege.

Rule S. D.
N. Y., 4.

G. O. 83.

F. 5.

Oath of al-
legiance by
citizen.

Rule S. D. designated by the judge, shall forthwith, if he be
 N. Y., 4, G. satisfied that the debts due from the petitioner ex-
 O. 13. ceed three hundred dollars, issue a warrant, to be
 Warrant, signed by such judge or register, directed to the
 F. 6. marshal of said district, authorizing him forthwith,
 Rule S. D. as messenger, to publish notices in such newspa-
 N. Y., 5. pers as the warrant specifies; to serve written or
 Notices, how given. printed notice, by mail or personally, on all credi-
 Rule S. D. tors upon the schedule filed with the debtor's pe-
 N. Y., 5, 21 tition, or whose names may be given to him, in ad-
 24. dition, by the debtor, and to give such personal or
 Notices, to other notice to any persons concerned as the war-
 whom. rant specifies, which notice shall state :

What to contain.

First. That a warrant in bankruptcy has been issued against the estate of the debtor.

Second. That the payment of any debts and the delivery of any property belonging to such debtor to him or for his use, and the transfer of any property by him, are forbidden by law.

G. O. 13. *Third.* That a meeting of creditors of the debtor giving the names, residences, and amounts, so far as known, to prove their debts and choose one or more assignees of his estate, will be held at a court of bankruptcy, to be holden at a time and place designated in the warrant not less than ten nor more than ninety days after the issuing of the same.

Residence of debtor. A citizen of Massachusetts acquired domicile in California, abandoned this with intent to remove to Massachusetts; did so by way of Paris, spending a year in transit. Residence for purpose of application considered to have been Massachusetts from time of leaving California. *Walker, Mass., B. R., 1, 91.*

Carrying on business. Where petition said, "has been a clerk in New York city," held insufficient. Petitioner intended to return to Chicago. Was unmarried, and lived in Jersey. Petition dismissed. *Magie, S. D. N. Y., B. R., 1, 138.*

Petitioner alleged "carrying on," &c. Petitioner, a clerk in New York, lived in Jersey. 170 out of 212 creditors in New York city. Held, petition properly filed in New York city. *Belcher, S. D. N. Y., B. R., 1, 202.*

Agent under a power of attorney. Principal's name over door. "Carries on business," at that place. Bailey, *S. D. N. Y., B. R.*, 1, 178.

As to filing individual, instead of copartnership petition, so that it gives an actual preference to individual creditors legally. As to creating a joint estate for same purpose, by purchase of worthless partnership debts by separate creditors. Byrne, *W. D. Pa., B. R.*, 1, 122.

Property, the legal title of which is in bankrupt, although really a cover and fraud on the creditors of another, is assets. O'Bannan, *E. D. Mo., B. R.*, 2, 6.

Claim for damages is property. Orme, *S. D. N. Y., Int. Rev. Rec.*, VI., 85.

Statute limitations. Entry of debt on schedule not a revivor. Kinsley, *Mass., B. R.*, 1, 67; Harden, *Maine, B. R.*, 1, 97.

Advisable to insert such debts on schedule. Ray, *S. D. N. Y., Int. Rev. Rec.*, VI., 223; Perry, *N. D. N. Y., B. R.*, 1, 2.

A debt so barred is also discharged in bankruptcy. Difference between a provable debt, and one that can be proved. 1st, refers to nature, 2d, to circumstances surrounding debt. A debt barred by the statute, though provable, cannot be proved. (Inference, it need not be inserted in schedules.) Kinsley, *Mass.*, 1 *B. R.*, 67; Harden, *Maine, B. R.*, 1, 97.

Naming creditor in schedule gives him no rights (inference from). Altenheim, *S. D. N. Y., Int. Rev. Rec.*, VI., 117.

"Residence, &c., unknown." Schedule should show diligence in inquiry. Residence, *i. e.*, abode, not business place. Pulver, *S. D. N. Y., Int. Rev. Rec.*, VI., 77.

Schedule A., 3. "Whether," &c., requires party to allege or deny existence of stated facts. Orme, *S. D. N. Y., Int. Rev. Rec.*, VI., 116.

Papers may be amended, at discretion of register. *Id.*

Orders to amend should specify particulars. § 26, and cases.

Variation of name—as of middle letter—where creditor not misled, not material. So held, where name, Wm. D. Hill, given Wm. B. Hill. Hill, *S. D. N. Y., Int. Rev. Rec.*, VI., 51.

Petition and schedules are filed with clerk. Order of reference is taken. Bankrupt therein required to attend before a register named, at a certain time. If bankrupt do not appear, register may adjourn day. If bankrupt still remain away, petition may be dismissed on register's report. Hatcher, *Ky.*, 1 *B. R.*, 91.

Register may be changed for cause. As when he tries to influence action of creditors in choosing assignee. Smith, *S. D. N. Y., B. R.*, 1, 25.

Interval before first meeting. Ten to ninety days, to be at discretion of Register. Hays, *S. D. N. Y., Int. Rev. Rec.*, VI., 52.

Publication may be in foreign newspaper, at discretion of register. Robinson, *S. D. N. Y., Int. Rev. Rec.*, VI., 29.

No revenue stamps required. *Int. Rev. Act*, § 195.

First meeting ordered for 24th July; first publication was 15th July. Not ten days. Devlin, *S. D. N. Y., Int. Rev. Rec.*, VI., 61.

"Given," *i. e.*, advertised and mailed. *Id.*

Form of order, to show cause why adjudication should not be annulled. Stern, *S. D. N. Y., Int. Rev. Rec.*, VI., 87.

Proceedings annulled, on request of all, but one, proved creditors before appointment of assignee. Miller, *W. D. Pa., B. R.*, 1, 165.

OF ASSIGNMENTS AND ASSIGNEES.

SEC. 12. *And be it further enacted,* That at the meeting, held in pursuance of the notice, one of the registers of the court shall preside, and the messenger shall make return of the warrant and of his doings thereon; and if it appears that the notice to the creditors has not been given as required in the warrant, the meeting shall be forthwith adjourned, and a new notice given as required. If the debtor dies after the issuing of the warrant, the proceedings may be continued and concluded in like manner as if he had lived.

First meeting, creditor's proceedings.
F. 7.

Death of debtor.

Creditors not proved cannot be heard, even to ask adjournment for purpose of proving. W. D. Hill, *S. D. N. Y., Int. Rev. Rec.*, VI., 51.

SEC. 13. *And be it further enacted,* That the creditors shall, at the first meeting held after due notice from the messenger, in presence of a register designated by the court, choose one or more assignees of the estate of the debtor; the choice to be made by the greater part in value and in number of the creditors who have proved their debts. If no choice is made by the creditors at said meeting, the judge, or, if there be no opposing interest, the register, shall appoint one or more assignees. If an assignee, so chosen or appointed, fails within five days to express in writing his acceptance of the trust, the judge or register may fill the vacancy. All elections or appointments of assignees shall be subject to the approval of the judge; and when in his judgment it is for any cause needful or expedient, he may appoint additional as-

Assignee, how chosen
F. 15, 11, 13
§§ 19, 23.
G. O. 9. F. 16. Rule 8
D. N. Y., 7.
Or appointed.
Rule 8. D. N. Y., 8.
And approved, § 18.

signees, or order a new election. The judge at any time may, and, upon the request in writing of any creditor who has proved his claim, shall require the assignee to give good and sufficient bond to the United States, with a condition for the faithful performance and discharge of his duties; the bond shall be approved by the judge or register by his indorsement thereon, shall be filed with the record of the case, and inure to the benefit of all creditors proving their claims, and may be prosecuted in the name and for the benefit of any injured party. If the assignee fails to give the bond within such time as the judge orders, not exceeding ten days of the notice to him of such order, the judge shall remove him and appoint another in his place.

Assignee's
bond, F. 17.

Failure to
give bond,
§ 18.

No creditor appearing, register appoints. Cogswell, *S. D. N. Y., Int. Rev. Rec.*, VI., 85.

Meeting to be had at hour named, and to continue until assignee chosen or apparent that none will be. Phelps *et al.*, *Ky., B. R.*, 1., 139.

Creditor having security worth less than his claim may, without abandoning his security, prove excess and vote thereon. Bolton, *S. D. N. Y., B. R.*, 1., 83.

Creditors having security not to vote for assignee. Davis & Son, *N. D. Ohio, Int. Rev. Rec.*, VI., 140.

Register may postpone proofs of debt under certain circumstances, as § 23, and take deposition on the subject. Orme, *S. D. N. Y., Int. Rev. Rec.*, VI. 85.

Vote can be cast by party or duly constituted attorney, attorney at law not such; one partner can cast vote of firm without authority of others,—one of several joint creditors must have such authority, and cannot vote for proportionate part; a firm counted as one creditor,—an individual creditor votes; majority of *all proved* necessary to elect. Purvis, *Md., Int. Rev. Rec.*, VI., 173.

Individual creditor, no vote where firm is in bankruptcy, see § 36. Phelps *et al.*, *Ky., B. R.*, 1., 139.

Assignee must reside in the district. Havens, *N. J., B. R.*, 1, 126.

Must not be related to, or interested in a corporation whose debt has been secured by, bankrupt. Powell, *N. J., B. R.*, 2, 17.

Motion to set aside assignee must be made to court—not to register. Stokes, *S. D. N. Y., B. R.*, 1, 130.

Register must certify to judge any reason with which he is acquainted why assignee should not be approved. Bliss, *S. D. N. Y., Int. Rev. Rec.*, VI., 116.

One who was counsel to bankrupt, but is not, may be assignee. *Clairmont, Mass., 1 B. R., 42.*

Assignee may be removed when because of new election after amendment by bringing in new parties, creditors, he is superfluous. *Perry, sub, § 26.*

PROPERTY VESTING IN ASSIGNEE.

SEC. 14. *And be it further enacted,* That as soon as said assignee is appointed and qualified, the judge, or, where there is no opposing interest, the register, shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the bankrupt, with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of said proceedings in bankruptcy, and thereupon, by operation of law, the title to all such property and estate, both real and personal, shall vest in said assignee, although the same is then attached on mesne process as the property of the debtor, and shall dissolve any such attachment made within four months next preceding the commencement of said proceedings: *provided, however,* that there shall be excepted from the operation of the provisions of this section the necessary household and kitchen furniture, and such other articles and necessities of such bankrupt as the said assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether, not to exceed in value, in any case, the sum of five hundred dollars; and also the wearing apparel of such bankrupt, and that of his wife and children, and the uniform, arms, and equipments of any person who is or has been a soldier in the militia or in the service of the United States; and such other property as now is, or hereafter shall be, exempted from attachment, or seizure, or levy on execution by the laws of the United States, and

Assignment to assignee, F. 18.
Rule S. D. N. Y., 9.
Relates back.
Although attached.
Attachment dissolved.
Exemptions
F. 20.
G. O. 19.

such other property not included in the foregoing exceptions as is exempted from levy and sale upon execution or other process or order of any court by the laws of the State in which the bankrupt has his domicile at the time of the commencement of the proceedings in bankruptcy, to an amount not exceeding that allowed by such State exemption laws in force in the year eighteen hundred and sixty-four: *provided*, that the foregoing exception shall operate as a limitation upon the conveyance of the property of the bankrupt to his assignees, and in no case shall the property hereby excepted pass to the assignees, or the title of the bankrupt thereto be impaired or affected by any of the provisions of this act; and the determination of the assignee in the matter shall, on exception taken, be subject to the final decision of the said court: *and provided further*, that no mortgage of any vessel or of any other goods or chattels, made as security for any debt or debts, in good faith and for present considerations, and otherwise valid, and duly recorded, pursuant to any statute of the United States, or of any State, shall be invalidated or affected hereby; and all the property conveyed by the bankrupt in fraud of his creditors; all rights in equity, choses in action, patents and patent rights and copyrights; all debts due him or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which the bankrupt had against any person arising from contract or from the unlawful taking or detention of or injury to the property of the bankrupt; and all his rights of redeeming such property or estate, with the like right, title, power, and authority to sell, manage, dispose of, sue for, and recover or defend the same, as the bankrupt might or could have had if no assignment had

Determina-
tion of as-
signee sub-
ject to deci-
sion of court.

Mortgage,
when valid,
§ 20.

Specific
property
covered by
assignment.

Assignee's
powers over
§ 20.

Suits pending continued by assignee.

Evidence of title of assignee.

Actions against assignee.
§§ 1, 2.

Bankrupt's books of account.

Suits not to abate by death.

Assignee may redeem lien. *Supra* and G. O., 17, § 20, F. 34.

been made, shall, in virtue of the adjudication of bankruptcy and the appointment of his assignee, be at once vested in such assignee; and he may sue for and recover the said estate, debts, and effects, and may prosecute and defend all suits at law or in equity, pending at the time of the adjudication of bankruptcy, in which such bankrupt is a party in his own name, in the same manner and with like effect as if they might have been prosecuted or defended by such bankrupt; and a copy, duly certified by the clerk of the court under the seal thereof, of the assignment made by the judge or register, as the case may be, to him as assignee, shall be conclusive evidence of his title as such assignee to take, hold, sue for, and recover the property of the bankrupt, as hereinbefore mentioned; but no property held by the bankrupt in trust shall pass by such assignment. No person shall be entitled to maintain an action against an assignee in bankruptcy for any thing done by him as such assignee, without previously giving him twenty days' notice of such action, specifying the cause thereof, to the end that such assignee may have an opportunity of tendering amends, should he see fit to do so. No person shall be entitled, as against the assignee, to withhold from him possession of any books of account of the bankrupt, or claim any lien thereon; and no suit in which the assignee is a party shall be abated by his death or removal from office, but the same may be prosecuted and defended by his successor, or by the surviving or remaining assignee, as the case may be. The assignee shall have authority, under the order and direction of the court, to redeem or discharge any mortgage or conditional contract, or pledge or deposit, or lien upon any property, real or personal, whenever payable, and to tender due performance of the

condition thereof, or to sell the same, subject to such mortgage, lien, or other incumbrances. The debtor shall also, at the request of the assignee, and at the expense of the estate, make and execute any instruments, deeds, and writings which may be proper, to enable the assignee to possess himself fully of all the assets of the bankrupt. The assignee shall immediately give notice of his appointment, by publication at least once a week, for three successive weeks, in such newspapers as shall, for that purpose, be designated by the court, due regard being had to their general circulation in the district, or in that portion of the district in which the bankrupt and his creditors shall reside, and shall, within six months, cause the assignment to him to be recorded in every registry of deeds or other office within the United States where a conveyance of any lands owned by the bankrupt ought by law to be recorded; and the record of such assignment, or a duly certified copy thereof, shall be evidence thereof in all courts.

Debtor to execute instruments.

Notice of appointment. F. 19. Rule S. D. N. Y., 10, 21.

Record assignment.

Evidence of assignment. Rule S. D. N. Y., 9.

Register may take estate before assignee appointed. Hasbrouck, *S. D. N. Y., Int. Rev. Rec.*, VI., 115.

Relation back. June 25, 1867, petition filed. Aug. 19, new schedules filed. Sept. 10, same amended. 12, adjudication. 13, warrant. 23, first meeting. 25, examination ordered. On Aug. 25, bankrupt borrowed \$5,000. Assignment held not to cover this property. Patterson, *S. D. N. Y., Int. Rev. Rec.*, VI., 157.

Claim for damages is property. Orme, *S. D. N. Y., Int. Rev. Rec.*, VI., 85.

Assignee takes same rights as execution creditor. Appold, *E. D. Pa., B. R.*, 1, 179.

Assignee takes subject to liens. Court may direct liquidation. See §§ 1, 20, 22. Winn, *N. D. Ga., B. R.*, 1, 132.

Assignee, by order of court, may sell incumbered property free, and lien may be transferred to proceeds. Salmon, *N. D. Ga., B. R.*, 2, 19.

Mere judgment no lien. Levy made after filing petition set aside. Pennington, assignee, *v. Sale*, *N. D. Miss.*, 1 *B. R.*, 157; Jones *v. Leach*, *N. D. Miss.*, 1 *B. R.*, 165.

Mortgaged premises sold by assignee under order of court, where a difference in former and present value of same appears. Stewart, *N. D. Ala., B. R.*, 1, 42.

National Bank has lien on shares for debt of shareholder, where so provided in by-laws. *Bigelow & others, S. D. N. Y., B. R., 1, 202.*

First execution levied, second received by sheriff 10 A. M., Nov. 5, 1867. 3 P. M. same day, petition filed. Second execution a lien. *Smith, S. D. N. Y., B. R., 1, 170.*

General assignees, where no fraud or intent to go into bankruptcy exists, retain assigned property, and have a lien. *Sedgwick, assignee, v. Place, S. D. N. Y. Circ., B. R., 1, 204; Arledge, S. D. Ga., B. R., 195.*

Deficiency. Assignee selling mortgaged property not obliged to make out of estate to the creditor the difference between the nett proceeds and the debt. *Purcell, &c., S. D. N. Y., B. R., 2, 10.*

A creditor's bill, unaccompanied by receiver, not a lien. *Stewart v. Isidor, N. Y. Com. Pleas, B. R., 1, 129.*

Landlord's right to distrain not a lien. *Appold, E. D. Pa., B. R., 1, 179.*

"No property held in trust for," &c. passes. Assignee must deliver up property to owners, and they may maintain ordinary action in State court. *Noakes, Md., B. R., 1, 164.*

Property conveyed in fraud of creditors. In 1857 bankrupt made general assignment, which has been set aside as fraudulent, and from which decision appeal pending. Assignee in bankruptcy obtains injunction restraining parties. *Beiser, S. D. N. Y., B. R., 1, 108.*

Afterwards, on bill by assignee to recover property, it appears that a receiver had been appointed. Held, a lien had attached, and the injunction dissolved. Same at suit of Sedgwick and Sedgwick, assignee, *v. Minck, et al., S. D. N. Y. Circ., B. R., 1, 204.*

"Conveyed by,"—*i. e.*, caused to be made by. *Meyers, S. D. N. Y., B. R., 1, 162.*

Where such conveyance prior to passage of bankrupt law, property vests in assignee. *Stewart v. Isidor, N. Y. Com. Pleas, B. R., 1, 129; Meyers, S. D. N. Y., B. R., 1, 162.*

The 35th section does not limit the right in this respect. *Bradshaw, assignee, v. Klein, Ind., B. R., 1, 146.*

Exemptions. That bankrupt's wife possesses property, no reason for limiting. Articles of luxury or ornament (gold watches, pianos, &c.) not articles which may be set apart. The property exempt by State law is in addition to the \$500 exemption; and this may, as in Indiana, permit bankrupt to retain gold watch. There, the limit is \$300 of any description of property. Assignee's decision, refusing to set apart \$175 of necessary household property, reversed. *Cobb, Ind., B. R., 1, 106.*

Property exempt by State law is in addition to what assignee may set apart. *Ruth, E. D. Penn., VI. Int. Rev. Rec., 166.*

Exemptions are of separate property only, not of partnership assets. *Hafer, E. D. Pa., B. R., 1, 147.*

Each partner entitled to full exemptions out of firm assets. Judge Hill, *dictum*, *Miss.*, *B. R.*, 1, 187.

Property that lies under attachment, if exempt by this law, is to be returned to debtor. Money received from sale represents property. Ellis, *Invol.*, *E. D. Mo.*, *B. R.*, 1, 154.

Mesne process—all other than final process. Pennington, assignee, *v.* Lowenstein, *N. D. Miss.*, *B. R.*, 1, 157.

Money resulting from book debts cannot be exempted, although bankrupt property has been sold under execution. Lawson, *Md.*, *B. R.*, 2, 19.

Assignee may delay "setting apart" exempt property, if he has not come into possession, and if the title is in question, until twenty days after final decision of court. Shields, *W. D. Pa.*, *B. R.*, 1, 170.

SEC. 15. *And be it further enacted*, That the assignee shall demand and receive from any and all persons holding the same all the estate assigned, or intended to be assigned, under the provisions of this act; and he shall sell all such unincumbered estate, real and personal, which comes to his hands, on such terms as he thinks most for the interest of the creditors; but upon petition of any person interested, and for cause shown, the court may make such order concerning the time, place, and manner of sale, as will, in its opinion, prove to the interest of the creditors; and the assignee shall keep a regular account of all money received by him as assignee, to which every creditor shall, at reasonable times, have free resort.

Assignee to collect assets. G. O. 19.
To sell. G. O. 21. Rule S. D. N. Y., 11.
§§ 25, 17, 28.
Form 64, 65.
Keep accounts. § 17, G. O. 19.

Assignee may sell without order of court. White & May, *S. D. N. Y.*, 1 *B. R.*, 1.

Neither court nor register is the general adviser of assignee. Sturgeon, *Ky.*, 1 *B. R.*, 131.

That assignee had sold for \$800, and a personal fee of \$200, what was, within four months after, offered for \$20,000 by purchaser, is sufficient to repel idea of *bona fides* in the sale Mott, *S. D. N. Y.*, 1 *B. R.*, 9.

SEC. 16. *And be it further enacted*, That the assignee shall have the like remedy to recover all said estate, debts, and effects in his own name as

Assignee's remedy.

the debtor might have had if the decree in bankruptcy had not been rendered and no assignment had been made. If, at the time of the commencement of the proceedings in bankruptcy an action is pending in the name of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall, if he requires it, be admitted to prosecute the action in his own name, in like manner and with like effect as if it had been originally commenced by him. No suit pending in the name of the assignee shall be abated by his death or removal; but upon the motion of the surviving, or remaining, or new assignee, as the case may be, he shall be admitted to prosecute the suit, in like manner and with like effect as if it had been originally commenced by him. In suits prosecuted by the assignee, a certified copy of the assignment made to him by the judge or register shall be conclusive evidence of his authority to sue.

Substituted
in pending
action.

Not abated
by death.

Evidence of
authority.

SEC. 17. *And be it further enacted*, That the assignee shall, as soon as may be after receiving any money belonging to the estate, deposit the same in some bank in his name as assignee, or otherwise keep it distinct and apart from all other money in his possession; and shall, as far as practicable, keep all goods and effects belonging to the estate separate and apart from all other goods in his possession, or designated by appropriate marks, so that they may be easily and clearly distinguished, and may not be exposed or liable to be taken as his property or for the payment of his debts. When it appears that the distribution of the estate may be delayed by litigation or other cause, the court may direct the temporary investment of the money belonging to such estate in securities to be approved by the judge or register of

To deposit
money.

G. O. 23.
Rule S. D.
N. Y., 20.

Keep es-
tate dis-
tinct.

Investment
may be or-
dered.

said court, or may authorize the same to be deposited in any convenient bank, upon such interest, not exceeding the legal rate, as the bank may contract with the assignee to pay thereon. He shall give written notice to all known creditors, by mail or otherwise, of all dividends, and such notice of meetings, after the first, as may be ordered by the court. He shall be allowed, and may retain, out of money in his hands, all the necessary disbursements made by him in the discharge of his duty, and reasonable compensation for his services, in the discretion of the court. He may, under the direction of the court, submit any controversy arising in the settlement of demands against the estate, or of debts due to it, to the determination of arbitrators, to be chosen by him and the other party to the controversy, and may, under such direction, compound and settle any such controversy by agreement with the other party, as he thinks proper and most for the interest of the creditors.

§§ 15, 25, 28.

Notice of dividends
F. 28.Rule S. D.
N. Y., 12.

Allowed disbursements.

Arbitration. G. O.
20.Settle controversy.
G. O. 17.

Assignee to apply to court, not to register. Graves, S. D. N. Y., B. R., 1, 19.

SEC. 18. *And be it further enacted*, That the court, after due notice and hearing, may remove an assignee for any cause which, in the judgment of the court, renders such removal necessary or expedient. At a meeting called by order of the court in its discretion for the purpose, or which shall be called upon the application of a majority of the creditors in number and value, the creditors may, with consent of the court, remove any assignee by such a vote as is hereinbefore provided for the choice of assignee. An assignee may, with the consent of the judge, resign his trust and be discharged therefrom. Vacancies caused by death

Removal of assignee.
Resignation, &c.

§ 13.

G. O. 23.

F. 40, 41, 42,
43Rule S. D.
N. Y., 7.Vacancies
in office of.

F. 44.

General duties of assignee considered.

Survivorship.

Assignee may be punished.

or otherwise in the office of assignee may be filled by appointment of the court, or, at its discretion, by an election by the creditors, in the manner hereinbefore provided, at a regular meeting, or at a meeting called for the purpose, with such notice thereof in writing to all known creditors, and by such person, as the court shall direct. The resignation or removal of an assignee shall in no way release him from performing all things requisite on his part for the proper closing up of his trust and the transmission thereof to his successors, nor shall it affect the liability of the principal or surety on the bond given by the assignee. When, by death or otherwise, the number of assignees is reduced, the estate of the debtor not lawfully disposed of, shall vest in the remaining assignee or assignees, and the persons selected to fill vacancies, if any, with the same powers and duties relative thereto as if they were originally chosen. Any former assignee, his executors, or administrators, upon request, and at the expense of the estate, shall make and execute to the new assignee all deeds, conveyances, and assurances, and do all other lawful acts requisite to enable him to recover and receive all the estate. And the court may make all orders which it may deem expedient to secure the proper fulfillment of the duties of any former assignee, and the rights and interests of all persons interested in the estate. No person who has received any preference contrary to the provisions of this act shall vote for or be eligible as assignee; but no title to property, real or personal, sold, transferred, or conveyed by an assignee, shall be affected or impaired by reason of his ineligibility. An assignee refusing or unreasonably neglecting to execute an instrument when lawfully required by the court, or disobeying a lawful order or decree of the court in the

premises, may be punished as for a contempt of court.

Motion to set aside appointment to be made to court, not to register. Stokes, *S. D. N. Y., B. R.*, 1, 130; New York Mail Steamship Co., *S. D. N. Y.*, Aug. 12, 1868.

OF DEBTS, AND PROOF OF CLAIM.

SEC. 19. *And be it further enacted*, That all debts due and payable from the bankrupt at the time of the adjudication of bankruptcy, and all debts then existing but not payable until a future day, a rebate of interest being made when no interest is payable by the terms of the contract, may be proved against the estate of the bankrupt. All demands against the bankrupt for or on account of any goods or chattels wrongfully taken, converted or withheld by him, may be proved and allowed as debts to the amount of the value of the property so taken or withheld, with interest. If the bankrupt shall be bound as drawer, indorser, surety, bail, or guarantor, upon any bill, bond, note, or any other specialty or contract, or for any debt of another person, and his liability shall not have become absolute until after the adjudication of bankruptcy, the creditor may prove the same after such liability shall have become fixed, and before the final dividend shall have been declared. In all cases of contingent debts and contingent liabilities contracted by the bankrupt, and not herein otherwise provided for, the creditor may make claim therefor, and have his claim allowed, with the right to share in the dividends if the contingency shall happen before the order for the final dividend; or he may at any time apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall then be done in such manner as the court shall order, and he shall be allowed to prove

As to the debts of bankrupt payable at time of declaration of bankruptcy and those payable in future.

Demand for goods converted.

Conditional liability.

§ 27.

Forms 22, 23, 24, 27.

- Liability as bail, &c.** for the amount so ascertained. Any person liable as bail, surety, guarantor, or otherwise for the bankrupt, who shall have paid the debt or any part thereof in discharge of the whole, shall be entitled to prove such debt, or to stand in the place of the creditor if he shall have proved the same, although such payments shall have been made after the proceedings in bankruptcy were commenced. And any person so liable for the bankrupt, and who has not paid the whole of said debt, but is still liable for the same or any part thereof, may, if the creditor shall fail or omit to prove such debt, prove the same either in the name of the creditor or otherwise, as may be provided by the rules, and subject to such limitations and regulations as may be established by such rules. Where the bankrupt is liable to pay rent, or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof, up to the time of the bankruptcy, as if the same grew due from day to day, and not at such fixed and stated periods. If any bankrupt shall be liable for unliquidated damages arising out of any contract or promise, or on account of any goods or chattels wrongfully taken, converted, or withheld, the court may cause such damages to be assessed in such mode as it may deem best, and the sum so assessed may be proved against the estate. No debts other than those above specified shall be proved or allowed against the estate.
- Unliquidated damages, contract, or goods converted.**
- § 27.
- Rent.**
- § 21.
- § 33.

Debts barred by statute limitations of place where petition is filed. Provable, and can be proved. Ray, *S. D. N. Y., Int. Rev. Rec.*, VI., 223; Perry, *N. D. N. Y., B. R.*, 1, 2; Shepard, *N. D. N. Y., B. R.*, 1, 115.

Provable and cannot be proved. Kinsley, *Mass., B. R.*, 1, 67; Harden, *Me., B. R.*, 1, 97.

Debt on loan of confederate money, to hire substitute for Confederate army, void. Same, where consideration Confederate bills of credit. Milner, *N. D. Ga., B. R.*, 1, 19; *Id.*, 1, 108.

Under individual petition copartnership creditors may prove. Assets administered according to § 36. Frear, *S. D. N. Y., B. R.*, 1, 202.

Usurious debt provable. As to reservation usurious interest by National Bank. Moore, *S. D. O., B. R.*, 1, 123.

Proof of debt waives lien acquired by creditor's bill not yet in decree. Stewart v. Isidor, *Com. Pleas, N. Y., B. R.*, 1, 129.

So as to any lien, if proof does not refer to it. *Id.*

Proof of debt cannot be withdrawn, but may be amended. Loweree, *S. D. N. Y., Int. Rev. Rec.*, VI., 115.

SEC. 20. *And be it further enacted*, That in all cases of mutual debts or mutual credits between the parties, the account between them shall be stated, and one debt set off against the other, and the balance only shall be allowed or paid, but no set-off shall be allowed of a claim in its nature not provable against the estate: *Provided*, that no set-off shall be allowed in favor of any debtor to the bankrupt of a claim purchased by or transferred to him after the filing of the petition. When a creditor has a mortgage or pledge of real or personal property of the bankrupt, or a lien thereon for securing the payment of a debt owing to him from the bankrupt, he shall be admitted as a creditor only for the balance of the debt after deducting the value of such property, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the court may direct; or the creditor may release or convey his claim to the assignee upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the bankrupt's right of redemption therein, on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon; and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper

Mutual credits. Set-off

Exceptions.

Lien. Creditor for balance. §§1, 14

How balance ascertained.

F. 34. Rule S. D. N. Y., 11. G. O. 21. §§ 15, 25.

If security exceeds debt.

to consummate the transaction. If the property is not so sold or released and delivered up, the creditor shall not be allowed to prove any part of his debt.

This section limits section 22.

Assignee may sell mortgaged land, subject to, or, in conjunction with the mortgagee, free from lien, without order of court. *McClellan, Ky., B. R., 1, 91.*

Court may order sale of mortgaged premises free and clear, transferring lien to proceeds. *Barrow et al., La., B. R., 1, 123; Loeb, Same; Winter, Same; Salmon, N. D. Ga., B. R., 2, 19.*

Proof of debt must mention lien, or it is waived. *Stewart v. Isidor, N. Y. Com. Pleas, B. R., 1, 129.*

Mortgage for securing payment of a debt, bankrupt not having at that time been insolvent, or in contemplation of insolvency, and although covering entire stock, valid. *Dunham, S. D. N. Y., B. R., 2, 10.*

If creditor holds security from persons other than bankrupt, and on which he has received nothing, he may prove whole debt. So held where bankrupt was indorser. Creditors held real estate as collateral. Massachusetts principle that the lien to be closed first distinguished as dependent on the use of the word *debtor*, in the State law, for *all liable for the debt*. *Cram, Me., B. R., 1, 133.*

Creditor having reasonable cause to believe debtor insolvent, took chattel mortgage. Insolvent told him that the chattel so conveyed was subject to lien, that a certain judgment would go against him, and he should be subject to great loss; and the creditor opened an account at his bank for money so loaned on mortgage in a third party's name. Request for recognition of his lien refused. *Bank, &c. v. Truax, assignee, Minn., B. R., 1, 146.*

Levy before filing petition gives lien. *Schnepf, E. D. N. Y., Int. Rev. Rec., VI., 214; Smith, S. D. N. Y., B. R., 1, 170.*

Levy after filing petition gives no lien. *Pennington, assignee, v. Sale, N. D. Miss., B. R., 1, 157.*

Before securities can be sold, debt must be proved under § 22. *Bigelow et al., E. D. N. Y., 1, 186.*

The by-laws of a National bank gave a lien on shares of member to secure any indebtedness. Held lien under this law, and creditor bank permitted to apply same towards indebtedness. *Bigelow, S. D. N. Y., B. R., 1, 202.*

SEC. 21. *And be it further enacted*, That no creditor proving his debt or claim shall be allowed to maintain any suit at law or in equity therefor against the bankrupt, but shall be deemed to have waived all right of action and suit against the bankrupt, and all proceedings already commenced, or unsatisfied judgments already obtained thereon, shall be deemed to be discharged and surrendered thereby; and no creditor whose debt is provable under this act shall be allowed to prosecute to final judgment any suit at law or in equity therefor against the bankrupt, until the question of the debtor's discharge shall have been determined; and any such suit or proceedings shall, upon the application of the bankrupt, be stayed to await the determination of the court in bankruptcy on the question of the discharge, *provided* there be no unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge: *and provided also*, that if the amount due the creditor is in dispute, the suit, by leave of the court in bankruptcy, may proceed to judgment, for the purpose of ascertaining the amount due, which amount may be proved in bankruptcy, but execution shall be stayed as aforesaid. If any bankrupt shall, at the time of adjudication, be liable upon any bill of exchange, promissory note, or other obligation in respect of distinct contracts as a member of two or more firms carrying on separate and distinct trades, and having distinct estates to be wound up in bankruptcy, or as a sole trader and also as a member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof and receipt of dividend in respect of such distinct contracts against the estates respectively liable upon such contracts.

Proof of claim waives legal remedy.
§ 26.

Provable claims not enforceable by legal means.

May proceed to judgment to ascertain amount.
§ 19.

Bankrupt's liability in respect of distinct estates.

State court cannot be enjoined. *Burns, W. D. Pa., Int. Rev. Rec.*, VI, 182; *Campbell, W. D. Pa., Int. Rev. Rec.*, 174; *Irving v. Hughes, E. D. Pa., B. R.*, 2, 20; Act of March, 1793, c. 5.

Parties may be enjoined. *Reed, S. D. N. Y., Int. Rev. Rec.*, VI, 21; *Metcalf, E. D. N. Y., Int. Rev. Rec.*, VI, 223; *Myers, S. D. N. Y., B. R.*, 1, 162; *Irving v. Hughes, E. D. Pa., B. R.*, 2, 20.

Form of stay. *Reed, S. D. N. Y., Int. Rev. Rec.*, VI, 21.

Form of injunction. *B. R.*, 1, 18.

Except where there is judgment, and it is followed by levy, and so becomes a lien. *Donelson, E. D. Pa., Int. Rev. Rec.*, VI, 199; and others, *supra*.

Injunction under such circumstances dissolved. Creditor allowed summary hearing. *Hafer, E. D. Pa., B. R.*, 1, 165; *Beck, E. D. Pa., B. R.*, 1, 165.

Section does not refer to debt not dischargeable hereunder. *Scymour, S. D. N. Y., Int. Rev. Rec.*, VI, 61.

Court may require proceeding to be by bill in equity. *Irving v. Hughes, E. D. Pa., B. R.*, 2, 20. Same case, without name, VI. *Int. Rev. Rec.*, 199.

Before appointment of assignee. Bankrupt obtains injunction, after, assignee applies. *Bowie, Md., B. R.*, 1, 185.

SEC. 22. *And be it further enacted,* That all proofs of debts against the estate of the bankrupt, by or in behalf of creditors residing within the judicial district where the proceedings in bankruptcy are pending, shall be made before one of the registers of the court in said district, and by or in behalf of non-resident debtors before any register in bankruptcy in the judicial districts where such creditors, or either of them, reside, or before any commissioner of the circuit court authorized to administer oaths in any district. To entitle a claimant against the estate of a bankrupt to have his demand allowed, it must be verified by a deposition in writing on oath or solemn affirmation before the proper register or commissioner, setting forth the demand, the consideration thereof, whether any and what securities are held

Proof of debts against the estate of bankrupt, where made

§ 4, and amendment of 1868.

Deposition. G. O. 5.

F. 22.
F. 21.

therefor, and whether any and what payments have been made thereon; that the sum claimed is justly due from the bankrupt to the claimant; that the claimant has not, nor has any other person for his use, received any security or satisfaction whatever other than that by him set forth; that the claim was not procured for the purpose of influencing the proceedings under this act, and that no bargain or agreement, express or implied, has been made or entered into, by or on behalf of such creditor, to sell, transfer, or dispose of the said claim, or any part thereof, against such bankrupt, or take or receive, directly or indirectly, any money, property or consideration whatever, whereby the vote of such creditor or assignee, or any action on the part of such creditor or any other person in the proceedings under this act, is or shall be in any way affected, influenced or controlled, and no claim shall be allowed unless all the statements set forth in such deposition shall appear to be true. Such oath or solemn affirmation shall be made by the claimant testifying of his own knowledge, unless he is absent from the United States, or prevented by some other good cause from testifying, in which cases the demand may be verified in like manner by the attorney or authorized agent of the claimant testifying to the best of his knowledge, information and belief, and setting forth his means of knowledge, or, if in a foreign country, the oath of the creditor may be taken before any minister, consul, or vice-consul of the United States; and the court may, if it shall see fit, require or receive further pertinent evidence, either for or against the admission of the claim. Corporations may verify their claims by the oath or solemn affirmation of their president, cashier, or treasurer. If the proof is satisfactory to the register or commissioner, it shall be signed by the deponent, and delivered or

Where
creditor ab-
sent.

F. 14, 24, 25,
26.

G. O. S.

Claims of
corpora-
tions, how
verified.
F. 23.

Proofs to be
sent to as-
signee.

Court may
examine
witnesses
and reject
claims.
G. O. 10.

33.

F. 66, 67.

sent by mail to the assignee, who shall examine the same and compare it with the books and accounts of the bankrupt, and shall register, in a book to be kept by him for that purpose, the names of creditors who have proved their claims, in the order in which such proof is received, stating the time of receipt of such proof, and the amount and nature of the debts, which books shall be open to the inspection of all the creditors. The court may, on the application of the assignee, or of the bankrupt, or without any application, examine upon oath the bankrupt, or any person tendering or who has made proof of claims, and may summon any person capable of giving evidence concerning such proof, or concerning the debt sought to be proved, and shall reject all claims not duly proved, or where the proof shows the claim to be founded in fraud, illegality or mistake.

Proof of debt cannot be withdrawn, but may be amended. Lowerree, *S. D. N. Y., Int. Rev. Rec.*, VI, 115.

Need not anticipate defenses. Knoepfel, *S. D. N. Y., Int. Rev. Rec.*, VI, 115.

Partnership debt to be stated as due the firm. Judge Wylie, *D. C., Int. Rev. Rec.*, VI, 150.

Proof by creditor holding security must show this. Bridgman, *S. D. Ga., B. R.*, 1, 59.

Creditor residing in same district where proceedings in bankruptcy of his debtor are pending must make proof of his debt before a register of that district. Haley, *Ala., B. R.*, 2, 13.

May be before United States commissioner although bankrupt and creditor both reside in same district. Sheppard, *N. D. N. Y., B. R.*, 1, 115.

Cannot be before a notary public in any case. Strauss, *S. D. Ohio, B. R.*, 2, 18.

Creditor must file his deposition or he is not a proved creditor. Sheppard, *N. D. N. Y., B. R.*, 1, 115.

Proofs of debt are to be sent to assignee to be registered. *S. D. N. Y. Rule, B. R.*, 2, 21.

Proofs of debt to be returned by assignee to register. *S. D. N. Y. Rule, B. R.*, 1, 1.

Power to several jointly cannot be executed by one alone, as to prove, &c. Phelps *et al., Ky., B. R.*, 1, 139.

SEC. 23. *And be it further enacted*, That when a claim is presented for proof before the election of the assignee, and the judge entertains doubts of its validity, or of the right of the creditor to prove it, and is of opinion that such validity or right ought to be investigated by the assignee, he may postpone the proof of the claim until the assignee is chosen. Any person who, after the approval of this act, shall have accepted any preference, having reasonable cause to believe that the same was made or given by the debtor, contrary to any provision of this act, shall not prove the debt or claim on account of which the preference was made or given, nor shall he receive any dividend therefrom, until he shall first have surrendered to the assignee all property, money, benefit, or advantage, received by him under such preference. The court shall allow all debts duly proved, and shall cause a list thereof to be made and certified by one of the registers; and any creditor may act at all meetings by his duly constituted attorney the same as though personally present.

Proof of claim of doubtful validity may be postponed.

Rule 6.
S. D. N. Y.
§ 22, G. O. 5.

Preferred creditor cannot prove except, &c.
§§ 35, 27.

F. 67, Rule
S. D. N. Y.,
13.

§ 4. F. 32,
33.

Creditor may act by duly constituted attorney.
F. 26, 24, 25.

Register may postpone proof of claim where court may, and take other proof on the subject. Orme, *S. D. N. Y., Int. Rev. Rec.*, VI., 85; Smith, *S. D. N. Y., Int. Rev. Rec.*, VI., 126.

A claim in suit and contested is one proper to be postponed. Jones, *Va., B. R.*, 2, 20.

One having reasonable cause to believe another insolvent takes a mortgage as security not permitted to surrender and prove under this section. Princeton, *Wis., B. R.*, 1, 178.

SEC. 24. *And be it further enacted*, That a supposed creditor who takes an appeal to the circuit court from the decision of the district court rejecting his claim, in whole or in part, shall, upon entering his appeal in the circuit court, file in the clerk's office thereof, a statement in writing of his claim, setting forth the same, substantially, as in

Creditor may appeal from decision.

Form 68.
§ 8.

a declaration for the same cause of action at law, and the assignee shall plead or answer thereto in like manner, and like proceedings shall thereupon be had in the pleadings, trial, and determination of the cause, as in an action at law commenced and prosecuted, in the usual manner, in the courts of the United States, except that no execution shall be awarded against the assignee for the amount of a debt found due to the creditor. The final judgment of the court shall be conclusive, and the list of debts shall, if necessary, be altered to conform thereto. The party prevailing in the suit shall be entitled to costs against the adverse party, to be taxed and recovered as in suits at law; if recovered against the assignee they shall be allowed out of the estate. A bill of exchange, promissory note, or other instrument, used in evidence upon the proof of a claim, and left in court or deposited in the clerk's office, may be delivered, by the register or clerk having the custody thereof, to the person who used it, upon his filing a copy thereof, attested by the clerk of the court, who shall indorse upon it the name of the party against whose estate it has been proved, and the date and amount of any dividend declared thereon.

Costs.

Documentary evidence may be returned on filing copies.

OF PROPERTY PERISHABLE AND IN DISPUTE.

SEC. 25. *And be it further enacted*, That when it appears to the satisfaction of the court that the estate of the debtor, or any part thereof, is of a perishable nature, or liable to deteriorate in value, the court may order the same to be sold, in such manner as may be deemed most expedient, under the direction of the messenger or assignee, as the case may be, who shall hold the funds received in place of the estate disposed of; and whenever it appears to the satisfaction of the court that the

May be sold

G. O. 22.

§§ 16, 17, 20, 28.

title to any portion of an estate, real or personal, which has come into possession of the assignee, or which is claimed by him, is in dispute, the court may, upon the petition of the assignee, and after such notice to the claimant, his agent or attorney, as the court shall deem reasonable, order it to be sold, under the direction of the assignee, who shall hold the funds received in place of the estate disposed of; and the proceeds of the sale shall be considered the measure of the value of the property in any suit or controversy between the parties in any courts. But this provision shall not prevent the recovery of the property from the possession of the assignee by any proper action commenced at any time before the court orders the sale.

Disputed title. §§ *supra*.

Action may be maintained.

EXAMINATION OF BANKRUPTS AND WITNESSES.

SEC. 26. *And be it further enacted*, That the court may, on the application of the assignee in bankruptcy, or of any creditor, or without any application, at all times require the bankrupt, upon reasonable notice, to attend and submit to an examination, on oath, upon all matters relating to the disposal or condition of his property, to his trade and dealings with others, and his accounts concerning the same, to all debts due or claimed from him, and to all other matters concerning his property and estate and the due settlement thereof according to law, which examination shall be in writing, and shall be signed by the bankrupt and filed with the other proceedings; and the court may, in like manner, require the attendance of any other person as a witness, and if such person shall fail to attend, on being summoned thereto, the court may compel his attendance by warrant directed to the marshal, commanding him to ar-

Court may direct. F. 45. G. O. 2.

As to what matters.

§§ 14, 34. F. 18. G. O. 10

Form of examination, G. O. 10.

F. 46, 47.

Other persons. G. O. 23.

F. 48, 49.

Compulsory process.

rest such person and bring him forthwith before the court, or before a register in bankruptcy for examination as such witness. If the bankrupt is imprisoned, absent, or disabled from attendance, the court may order him to be produced by the jailor, or any officer in whose custody he may be, or may direct the examination to be had, taken, and certified, at such time and place, and in such manner as the court may deem proper, and with like effect as if such examination had been had in court. The bankrupt shall, at all times, until his discharge, be subject to the order of the court, and shall, at the expense of the estate, execute all proper writings and instruments, and do and perform all acts required by the court touching the assigned property or estate, and to enable the assignee to demand, recover, and receive all the property and estate assigned, wherever situated, and for neglect or refusal to obey any order of the court, such bankrupt may be committed and punished as for contempt of court; if the bankrupt is without the district and unable to return and personally attend at any of the times or do any of the acts which may be specified or required pursuant to this section, and if it appear that such absence was not caused by willful default, and if, as soon as may be after the removal of such impediment, he offers to attend and submit to the order of the court in all respects, he shall be permitted so to do, with like effect as if he had not been in default. He shall also be at liberty, from time to time, upon oath, to amend and correct his schedule of creditors and property, so that the same shall conform to the facts. For good cause shown, the wife of any bankrupt may be required to attend before the court, to the end that she may be examined as a witness; and if such wife do not attend at the time and place specified in the order, the bankrupt

§§ 5, 7, 22, 38

Imprisoned person ordered to be produced.

G. 27.

Bankrupt at all times subject to order of court.

For neglect may be punished.

May amend G. O. 5, 14, 33.

Wife may be examined.

shall not be entitled to a discharge unless he shall prove to the satisfaction of the court that he was unable to procure the attendance of his wife. No bankrupt shall be liable to arrest during the pendency of the proceedings in bankruptcy in any civil action, unless the same is founded on some debt or claim from which his discharge in bankruptcy would not release him.

Penalty if she neglect.

Bankrupt not liable to arrest.

G. O. 27. § 21.

Applying for order 26 Nov 57.

Creditor who has proved his claim may obtain order from register, even before election of assignee. Patterson, *S. D. N. Y., Int. Rev. Rec.*, VI., 127.

Order may be served out of district, and within one hundred miles of place of holding court. *Act of Cong., March 2, 1793.*

Fees on examination to be paid by creditor. Mackintyre, *S. D. N. Y., Int. Rev. Rec.*, VI., 29.

So as to direct. Bankrupt to pay fees on cross-examination. See Schofield, *S. D. N. Y., B. R.*, 2, 1.

After the day for showing cause against discharge, and during ten days allowed to file amended specifications of objection, and where examination had by assignee, an application for examination of bankrupt, showing no reason, although made by thirteen proved creditors, is unreasonable, and will be refused. Isidor v. Blumenthal, *S. D. N. Y., B. R.*, 1, 33.

Wife of Bankrupt, when examined, entitled to witness fees, five cents per mile going and returning, and \$1.50 each day; and a new payment of traveling fees where, before adjourned day, she might reasonably have returned home. Griffin, *S. D. N. Y.*, 1 *B. R.*, 83; Van Tuyl, *S. D. N. Y.*, Aug. 25, 1868.

Application for examination of wife, made for delay, not granted. Selig, *S. D. N. Y., Int. Rev. Rec.*, VI., 206.

Bankrupt under examination cannot consult counsel, unless register allows for cause. Tanner, *Mass.*, *B. R.*, 1, 59; Judson, *S. D. N. Y., B. R.*, 1, 82; Collins, *Ky.*, *B. R.*, 1, 153.

May consult counsel. Patterson, *S. D. N. Y., Int. Rev. Rec.*, VI., 165.

Witness not entitled to counsel. Fredenburg, *S. D. N. Y., B. R.*, 1, 34.

Bankrupt not entitled to witness fees. Okell, *S. D. N. Y., B. R.*, 1, 52.

Bankrupt to be examined and cross-examined as a witness, and may correct his statements afterwards. Levy, *S. D. N. Y., Int. Rev. Rec.*, VI., 164; Leachman, *Ky.*, *B. R.*, 1, 91.

Not by interrogatories, as in equity or admiralty. Tanner, *Mass.*, *B. R.*, 1, 59.

To be protected from arrest as any other witness. "The same" refers to arrest. Kimball, *S. D. N. Y., Int. Rev. Rec.*, VI., 215.

Cannot be compelled to answer a question which would subject him to criminal prosecution, as one relating to gambling. Patterson, *S. D. N. Y., Int. Rev. Rec.*, VI., 166.

Examination to extend over whole business life and transactions. Bankrupt may refresh his recollection from memoranda. Counsel may be allowed at discretion of register. Tanner, *Mass., B. R.*, 1, 60; Judson, *S. D. N. Y., N. Y. Times*, March 17, 1868.

"His property." That belonging to him at the time of filing his petition, not that acquired since. Provided this be proved to have no connection with estate or business of a day previous to that time. Patterson, *S. D. N. Y., Int. Rev. Rec.*, VI., 158.

Creditors cannot show fraudulent character of particular debts. Tallman, *S. D. N. Y., N. Y. Times*, April 9, 1868; *B. R.*, 1, 122.

Creditor may ask as to existence of fraud in regard to his own claim. Bankrupt may refuse to answer, on ground of self-crimination. Koch, *N. D. N. Y., B. R.*, 1, 153.

When bankrupt testifies he is not the owner of certain property, questions relating to that property are irrelevant. Van Tuyl, *S. D. N. Y., B. R.*, 1, 194.

Same as to property apparently belonging to others. *Id.*

Disclosure is the object of the examination. Witnesses may be examined without first making issues. Blake, *W. D. Mich., B. R.*, 2, 2.

Bankrupt need not be notified of examination. Levy, *S. D. N. Y., Int. Rev. Rec.*, VI., 134.

Register not to decide competency, materiality or relevancy, but to note ground of objection. Levy, *S. D. N. Y., Int. Rev. Rec.*, VI., 164; Rosenfield, *N. J., B. R.*, 1, 160.

Bankrupt to take risk of refusing to answer, and creditor's application to commit for contempt. Rosenfield, *N. J., B. R.*, 160.

Examination in progress, even by simple adjournment from day to day, is not terminated by return day of order to show cause. Proceedings should be adjourned to allow reasonable opportunity for examination. Seckendorf, *S. D. N. Y., B. R.*, 1, 185.

Bankrupt suffering from sore foot, good excuse for non-attendance. Carpenter, *S. D. N. Y.*, 1 *B. R.*, 51.

Bankrupt cannot be arrested on a debt from which a discharge in bankruptcy would release him. If in custody, *habeas corpus* lies (act Feb. 5, 1867, 14 Stat. at L., 385); otherwise, simple order will suffice. Obedience enforced by process of contempt. Reference to ascertain nature of the debt on its face appearing dischargeable, may be had under § 38. Seymour, *S. D. N. Y., Int. Rev. Rec.*, VI., 60; Kimball, *S. D. N. Y., Int. Rev. Rec.*, VI., 215; Glasser, *S. D. N. Y., B. R.*, 1, 73.

Otherwise where original debt founded in fraud. And judgment does not merge the fraud. Patterson, *S. D. N. Y., B. R.*, 1, 58;

Seymour, *S. D. N. Y., Int. Rev. Rec.*, VI., 60; Pettis, *S. D. N. Y., B. Gazette*, 1, 13, *B. R.*, 2, 17.

Bankrupt discharged from arrest, proceedings stayed, and cause referred, to commissioner to take and certify evidence as to nature of debt. Jacoby, *S. D. N. Y., Int. Rev. Rec.*, VI., 149.

Where return to habeas corpus shows that the writ is founded on a claim for damages for deceit, court will not inquire, of itself or by reference, whether claim be well founded. Devoe, *Mass., B. R.*, 2, 11.

A bankrupt arrested and imprisoned before proceedings in bankruptcy were commenced, cannot be released on *habeas corpus*. Walker, *Mass., B. R.*, 1, 60.

A charging in execution, after the filing of petition, where original arrest preceded that act—bail meantime—relates back to original arrest, and is governed by last-named principle. Hazleton, *Mass., B. R.*, 2, 12.

Amendments may be allowed to specifications of objection. Mackintyre,—see § 31, there cited.

To creditor's petition under § 39,—see that section, and cases.

Creditor proved may ask that petitioner amend his papers where defective. Jones, *Va., B. R.*, 2, 20.

Register may order amendments of his own motion at any time. Order permitting amendment should specify particulars. Orme, *S. D. N. Y., Int. Rev. Rec.*, VI., 116; Morford, *S. D. N. Y., Int. Rev. Rec.*, VI., 13.

As to inserting additional names in schedules after assignee elected. Register allows amendment. New warrant. Notices to be mailed need not be printed but are to be sent to newly-named creditors and to old ones who have proved. New assignee to be chosen; old one, if not re-elected, to be, on notice to proved creditors, removed. Perry, *N. D. N. Y., B. R.*, 1, 2; Ratcliffe, *E. D. Pa., B. R.*, 1, 98; Morgenthal, *E. D. Pa., B. R.*, 1, 98.

OF THE DISTRIBUTION OF THE BANKRUPT'S ESTATE.

SEC. 27. *And be it further enacted*, That all creditors whose debts are duly proved and allowed shall be entitled to share in the bankrupt's property and estate *pro rata*, without any priority or preference whatever, except that wages due from him to any operative, or clerk, or house-servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the adjudication of bankruptcy, shall be entitled to priority, and shall be first paid in full: *Provided*,

Proved creditors to share.
§§ 19, 23.

Clerk, servant, &c., priority.

that any debt proved by any person liable as bail, surety, guarantor, or otherwise, for the bankrupt, shall not be paid to the person so proving the same, until satisfactory evidence shall be produced of the payment of such debt by such person so liable, and the share to which such debt would be entitled may be paid into court, or otherwise held for the benefit of the party entitled thereto, as the court may direct. At the expiration of three months from the date of the adjudication of bankruptcy in any case, or as much earlier as the court may direct, the court, upon request of the assignee, shall call a general meeting of the creditors, of which due notice shall be given, and the assignee shall then report, and exhibit to the court and to the creditors just and true accounts of all his receipts and payments, verified by his oath, and he shall also produce and file vouchers for all payments for which vouchers shall be required by any rule of the court; he shall also submit the schedule of the bankrupt's creditors and property as amended, duly verified by the bankrupt, and a statement of the whole estate of the bankrupt, as then ascertained, of the property recovered and of the property outstanding, specifying the cause of its being outstanding, also what debts or claims are yet undetermined, and stating what sum remains in his hands. At such meeting the majority in value of the creditors present shall determine whether any and what part of the net proceeds of the estate, after deducting and retaining a sum sufficient to provide for all undetermined claims which, by reason of the distant residence of the creditor, or for other sufficient reason, have not been proved, and for other expenses and contingencies, shall be divided among the creditors; but unless at least one-half in value of the creditors shall attend such meeting, either in person or by

Liability
only as
sureties, &c.
insufficient.

§ 19

Second
meeting

G. O. 25.
F. 23. Rule
S. D. N. Y.,
12, 21, 24.

Notice.

Accounts of
assignee.
F. 21.

Rule S. D.
N. Y. 14

Amount to
be distribu-
ted.
F. 30.

attorney, it shall be the duty of the assignee so to determine. In case a dividend is ordered, the register shall, within ten days after such meeting, prepare a list of creditors entitled to dividend, and shall calculate and set opposite to the name of each creditor who has proved his claim the dividend to which he is entitled out of the net proceeds of the estate set apart for dividend, and shall forward by mail to every creditor a statement of the dividend to which he is entitled, and such creditor shall be paid by the assignee in such manner as the court may direct.

When assignee to determine.
F. 32, 33.

Notice to creditors entitled.
G. O. 23
F. 31.

Second and third meeting unnecessary when no assets.
Rule S. D. N. Y., B. R., 1, 26-34; Sou, S. D. N. Y., B. R., 1, 59; Dean, Ky., B. R., 1, 27.

When assets. The order to show cause is to contain a provision under G. O. 25, for holding second and third meetings, and for notices thereof. *Rule S. D. N. Y., B. R., 1, 26.*

Bona fide transfer, for valuable consideration, of partnership assets by one partner to the other, vests property in the other as separate estate; and this so, even where partners were at the time insolvent. Joint creditors, under a separate petition, not to participate until separate creditors paid in full, even where there is no joint estate, and no solvent partner. Joint estate may be created by separate creditors, by buying debts that are worthless. Five shillings is sufficient to make a joint estate; so is the right of the firm to debts due it. The exception to above rule abrogated by this act, and this is not viewed as a preference under section 35, unless done in so short a time as to indicate contemplation of bankruptcy. In such a case, the property would be returned to assignee as joint assets. *Byrne, W. D. Pa., B. R., 1, 122.*

Joint creditors, where no joint estate and no solvent partner proved to exist, are to share *pari passu* with separate creditors. A partner sells to his copartner his interest in the stock, receiving notes. These are joint debts. Purchasing partner is forced into bankruptcy. Selling partner proves claim, and asks dividend. Request refused. *Jewett, N. D. Ill., B. R., 1, 131.*

Assignee allowed rent paid for storage. *Appold, E. D. Pa., 1 B. R., 179; Walton, E. D. Mo., 1 B. R., 154.*

SEC. 28. *And be it further enacted,* That the like proceedings shall be had at the expiration of the next three months, or earlier, if practicable, and a third meeting of creditors shall then be

Third meeting.
G. O. 25.
F. 28.
Rule S. D.
N. Y., 12,
15, 21, 24.

called by the court, and a final dividend then declared, unless any action at law or suit in equity be pending, or unless some other estate or effects of the debtor afterwards come to the hands of the assignee, in which case the assignee shall, as soon as may be, convert such estate or effects into money, and within two months after the same shall be so converted, the same shall be divided in manner aforesaid. Further dividends shall be made in like manner as often as occasion requires; and after the third meeting of creditors, no further meeting shall be called, unless ordered by the court. If at any time there shall be in the hands of the assignee any outstanding debts or other property, due or belonging to the estate, which cannot be collected and received by the assignee without unreasonable or inconvenient delay or expense, the assignee may, under the direction of the court, sell and assign such debts or other property in such manner as the court shall order. No dividend already declared shall be disturbed by reason of debts being subsequently proved; but the creditors proving such debts shall be entitled to a dividend equal to those already received by the other creditors before any further payment is made to the latter. Preparatory to the final dividend, the assignee shall submit his account to the court and file the same, and give notice to the creditors of such filing, and shall also give notice that he will apply for a settlement of his account, and for a discharge from all liability as assignee, at a time to be specified in such notice, and at such time the court shall audit and pass the accounts of the assignee, and such assignee shall, if required by the court, be examined as to the truth of such account, and if found correct, he shall thereby be discharged from all liability as assignee to any creditor of the bankrupt. The court shall there-

Final dividend unless.

Further dividend.

Outstanding debts due estate may be sold G. O. 21.

Accounting of assignee, &c. F. 38.

F. 36.

§ 4.

F. 37

F. 39.

§ 19.

upon order a dividend of the estate and effects, or of such part thereof as it sees fit, among such of the creditors as have proved their claims, in proportion to the respective amount of their said debts. In addition to all expenses necessarily incurred by him in the execution of his trust, in any case, the assignee shall be entitled to an allowance for his services, in such case, on all moneys received and paid out by him therein, for any sum not exceeding one thousand dollars, five per centum thereon; for any larger sum, not exceeding five thousand dollars, two and a half per centum on the excess over one thousand dollars; and for any larger sum, one per centum on the excess over five thousand dollars; and if, at any time, there shall not be in his hands a sufficient amount of money to defray the necessary expenses required for the further execution of his trust, he shall not be obliged to proceed therein until the necessary funds are advanced or satisfactorily secured to him. If, by accident, mistake, or other cause, without fault of the assignee, either or both of the said second and third meetings should not be held within the times limited, the court may upon motion of an interested party, order such meetings, with like effect as to the validity of the proceedings as if the meeting had been duly held. In the order for a dividend, under this section, the following claims shall be entitled to a priority or preference, and to be first paid in full in the following order:

§ 4.
§ 27.
Compensation of assignee hereunder.
§ 47 and cases.
Priorities

First. The fees, costs, and expenses of suits, and the several proceedings in bankruptcy under this act, and for the custody of property, as herein provided.

Second. All debts due to the United States, and all taxes and assessments under the laws thereof.

Third. All debts due to the State in which the proceedings in bankruptcy are pending, and all taxes and assessments made under the laws of such State.

Fourth. Wages due to any operative, clerk, or house servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the first publication of the notice of proceedings in bankruptcy.

Provisions
as to assess-
ments and
collection
of State
and nation-
al tax.

Fifth. All debts due to any persons who, by the laws of the United States, are or may be entitled to a priority or preference, in like manner as if this act had not been passed : *Always provided*, That nothing contained in this act shall interfere with the assessment and collection of taxes by the authority of the United States or any State.

Claim of attorney for fees and disbursements, not entitled to priority; only those due register, marshal and clerk contemplated. Heirschberg, *S. D. N. Y., E. R.*, 1, 195.

See § 27, and notes, for what are necessary expenses.

OF THE BANKRUPT'S DISCHARGE, AND ITS EFFECT.

When may
apply for
discharge.
F. 51.
G. O. 25.
F. 35.

SEC. 29. *And be it further enacted*, That at any time after the expiration of six months from the adjudication of bankruptcy, or if no debts have been proved against the bankrupt, or if no assets have come to the hands of the assignee, at any time after the expiration of sixty days, and within one year from the adjudication of bankruptcy, the bankrupt may apply to the court for a discharge from his debts, and the court shall thereupon order notice to be given by mail to all creditors who have proved their debts, and by publication at least once a week in such newspapers as the court shall designate, due regard being had to the general circulation

Notice, to
whom.
F. 52.
Rule S. D.
N. Y., 21,
24.
G. O. 23.

of the same in the district, or in that portion of the district in which the bankrupt and his creditors shall reside, to appear on a day appointed for that purpose, and show cause why a discharge should not be granted to the bankrupt. No discharge shall be granted, or, if granted, be valid, if the bankrupt has willfully sworn falsely in his affidavit annexed to his petition, Discharge, for what causes denied. § 31. schedule, or inventory, or upon any examination in the course of the proceedings in bankruptcy, in relation to any material fact concerning his estate or his debts, or to any other material fact; or if he has concealed any part of his estate or effects, or any books or writings relating thereto, or if he has been guilty of any fraud or negligence in the care, custody or delivery to the assignee of the property belonging to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of this act, or if he has caused, permitted, or suffered any loss, waste, or destruction thereof; or if, within four months before the commencement of such proceedings, he has procured his lands, goods, money, or chatels to be attached, sequestered or seized on execution; or if, since the passage of this act, he has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors; or has removed or caused to be removed any part of his property from the district, with intent to defraud his creditors; or if he has given any fraudulent preference contrary to the provisions of this act, or made any fraudulent payment, gift, transfer, conveyance, or assignment of

any part of his property, or has lost any part thereof in gaming, or has admitted a false or fictitious debt against his estate ; or if, having knowledge that any person has proved such false or fictitious debt, he has not disclosed the same to his assignee within one month after such knowledge ; or if, being a merchant or tradesman, he has not, subsequently to the passage of this act, kept proper books of account ; or if he, or any person in his behalf, has procured the assent of any creditor to the discharge, or influenced the action of any creditor at any stage of the proceedings by any pecuniary consideration or obligation ; or if he has, in contemplation of becoming bankrupt, made any pledge, payment, transfer, assignment, or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is or may be under liability for him, or for the purpose of preventing the property from coming into the hands of the assignee, or of being distributed under this act in satisfaction of his debts ; or if he has been convicted of any misdemeanor under this act, or has been guilty of any fraud whatever contrary to the true intent of this act ; and before any discharge is granted, the bankrupt shall take and subscribe an oath to the effect that he has not done, suffered, or been privy to any act, matter, or thing specified in this act as a ground for withholding such discharge, or as invalidating such discharge if granted.

Oath to be
taken by
bankrupt,

Petition of bankrupt to be filed with clerk ; a certified copy taken, and served on register, with certified copy of order of reference. Bellamy, *S. D. N. Y., Int. Rev. Rec.*, VI., 127.

Form 51 to be made by register, returnable before the court at office of register, names newspaper, orders publication three weeks successively, once a week, in two newspapers. *Id.*

"No assets,"—*i. e.*, has received no money. Dodge, *S. D. N. Y., B. R.*, 1, 115.

"If no debts," or "if no assets,"—*i. e.*, in either case bankrupt may apply after sixty days. Woolums, *Ky.*, 1 *B. R.*, 131.

Register issuing form 51 transmits to clerk a list of proved debts. Assignee sends similar list at same time. Bellamy, *S. D. N. Y.*, *Int. Rev. Rec.*, VI., 142.

Notices to be mailed to those who have proved only. McIntyre, *S. D. N. Y.*, *Int. Rev. Rec.*, VI., 165.

To be sent by clerk. His certificate sufficient proof of performance. So when notice produced directed creditor to appear December 2d error for 27th. Townsend, *S. D. N. Y.*, 1 *B. R.*, 1.

Must be seven days' interval between publications, and after last one. Bellamy, *S. D. N. Y.*, *Int. Rev. Rec.*, VI., 86.

Proceedings on return day to be adjourned, if examination pending. Mawson, *S. D. N. Y.*, *B. R.*, 1, 41.

Section 26, and cases thereunder.

Onus on creditor. Hill, *S. D. N. Y.*, *B. R.*, 1, 42.

Must be "willfully" false statements, and specifications should so allege. Reference to register to report testimony. Rathbone, *S. D. N. Y.*, *B. R.*, 1, 66.

Concealed estate. The wife knew nothing of her husband's business, except to sign such papers as were brought to her by him. Had no property at marriage except some furniture which had been given her, and which was sold four years after for \$600. Husband kept no account with his wife; never rendered her any statement; never been paid, or agreed to be paid, for his services. Husband pretended to act as agent for his wife. This, and his uncertainty and prevarication, shows a clear case for refusing a discharge. Hill, *S. D. N. Y.*, *B. R.*, 1, 114.

Bankrupt's name over door. He was in charge of business; received one-half of net profits. The business had been bought in the name of another, who paid two-thirds cash and one-third notes. These notes were paid as they fell due out of the receipts. Insufficient to prove that bankrupt had any interest in the business which he concealed. Discharge granted. Beardsley, *S. D. N. Y.*, *B. R.*, 1, 121.

In business depending on personal exertions (insurance brokerage). Bankrupt received one-tenth net earnings as salary; his wife receives two-tenths as dividend, for interest which she purchased for \$4,000 from retiring partner, but whose place in the labor she had not filled. Held, whole three-tenths was property of bankrupt. Discharge refused. Rathbone, *S. D. N. Y.*, *B. R.*, 1, 145.

Wife had, by the sale of two out of three unfinished houses, acquired means to complete the third and leave a surplus. This property had been the husband's (the bankrupt's). Others in the same business as bankrupt had made money. Creditors had sold on execution bankrupt's interest in this property. Discharge granted. Hummitsch, *E. D. Mo.*, *B. R.*, 2, 3.

Wife bought house in which herself and bankrupt lived, for part cash and part (\$6,000) her notes, indorsed by her husband. Lease

was made to husband at annual rent sufficient to pay accruing notes, taxes, and insurance. Creditors had sold on execution bankrupt's interest in house. Discharge granted. *Pomeroy, E. D. Mo., B. R., 2, 3.*

"Suffer." **"Contemplation of insolvency."** See cases *Secor, Black, Craft*, cited sub § 39.

A solicitor of freight for transportation company, also bought and shipped flour and grain, but kept no regular blotter, ledger, or day book. Kept only check and order books. Discharge refused. *O'Bannan, E. D. Mo., B. R., 2, 6.*

Bankrupt may lawfully *influence* creditor by any other means than pecuniary consideration. *Mawson, S. D. N. Y., B. R., 1, 115.*

Where debtor paid the attorney of withdrawing creditor \$20, and explained on examination that this was not a condition to withdrawing opposition, the firm said to be influenced not being produced. Discharge granted. *Mawson, S. D. N. Y., B. R., 1, 153.*

That a debt was created by fraud, no ground for refusing discharge. So, also, as to fraudulent conveyance made prior to passage of bankrupt act. "Since passage of act" relates to all causes for refusal, up to mutilating books. "Since," from the time of; "subsequently," at any time after. *Rosenfield, N. J., B. R., 1, 162; Tallman, S. D. N. Y., B. R., 1, 122.*

Second
bankruptcy

SEC. 30. *And be it further enacted*, That no person who shall have been discharged under this act, and shall afterwards become bankrupt, on his own application shall be again entitled to a discharge, whose estate is insufficient to pay seventy per centum of the debts proved against it, unless the assent in writing of three-fourths in value of his creditors who have proved their claims is filed at or before the time of application for discharge. But a bankrupt who shall prove to the satisfaction of the court that he has paid all the debts owing by him at the time of any previous bankruptcy, or who has been voluntarily released therefrom by his creditors, shall be entitled to a discharge in the same manner and with the same effect as if he had not previously been bankrupt.

SEC. 31. *And be it further enacted*, That any creditor opposing the discharge of any bankrupt, may file a specification in writing of the grounds of his opposition, and the court may in its discretion order any question of fact so presented to be tried at a stated session of the district court.

Specification of objection.

§ 29.

Trial, § 38.

G. O. 24.

F. 53.

Rule S. D.

N. Y., 16,

22.

Creditor not proved cannot be heard although named in schedule. Hill, *S. D. N. Y., Int. Rev. Rec.*, VI., 51; Levy, *S. D. N. Y., B. R.*, 1, 66.

May file objection at any time after proof of debt. Baum, *S. D. N. Y., Int. Rev. Rec.*, VI., 29.

May object though not proved. Sheppard, *N. D. N. Y.*, 1, 115.

Register not to pass upon their validity nor delay proceeding on their account. Puffer, *N. D. N. Y., B. R.*, 2, 17.

Specification must particularize facts descriptive of offense: time, place, person, &c. Hill, *S. D. N. Y., B. R.*, 1, 42; Mawson, *S. D. N. Y., B. R.*, 1, 115.

May be amended at discretion of court. McIntyre, *S. D. N. Y., B. R.*, 1, 115.

On return day, if specification filed, register certifies his proceedings and the opposition, to the court. Assignee makes return (F. 35), although he may have reason to believe that he will receive funds. Bankrupt takes oath required by § 29. Hughes, *S. D. N. Y., B. R.*, 1, 10.

Specifications to be filed within ten days after day for showing cause, appearance to be entered on the day. Tallman, *S. D. N. Y., B. R.*, 1, 145.

"On the day."—The day for showing cause or the adjourned day, if any. Thompson, *S. D. N. Y., B. R.*, 1, 65.

Register files all papers with the clerk. *B. R.*, 1, 97, Rule *S. D. N. Y.*; G. O. 7.

Adjournment sine die, or to day certain, enlarges time for filing specifications in first case till new order and ten days in last till ten days after adjourned day. Seckendorf, *S. D. N. Y., B. R.*, 1, 185; Tallman, *S. D. N. Y., B. R.*, 1, 145.

Trials not directed to be by jury are to be before referee (§ 38). Hearing any Saturday, stated session in term on four days' notice to party and to clerk. Rule *S. D. N. Y., B. R.*, 1, 58.

Onus on creditor. Hill, *S. D. N. Y., B. R.*, 1, 42.

SEC. 32. *And be it further enacted*, That if it shall appear to the court that the bankrupt has in all things conformed to his duty under this act,

When to be discharged.

§§ 19, 33. and that he is entitled, under the provisions thereof, to receive a discharge, the court shall grant him a discharge from all his debts except as herein-after provided, and shall give him a certificate thereof under the seal of the court, in substance as follows :

DISTRICT COURT OF THE UNITED STATES,
DISTRICT OF :

Form of.

Whereas has been duly adjudged a bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said be forever discharged from all debts and claims which by said act are made provable against his estate, and which existed on the day of , on which day the petition for adjudication was filed by (or against) him ; excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy. Given under my hand and the seal of the court at , in the said district, this day of , A. D. .
[Seal.] , Judge.

SEC. 33. *And be it further enacted*, That no debt created by the fraud or embezzlement of the bankrupt, or by his defalcation as a public officer, or while acting in any fiduciary character, shall be discharged under this act ; but the debt may be proved, and the dividend thereon shall be a payment on account of said debt ; and no discharge granted under this act shall release, discharge, or affect any person liable for the same debt for or with the bankrupt, either as partner, joint contractor, indorser, surety, or otherwise. And in all pro-

No debt created by fraud, or while acting as public officer, or in fiduciary capacity to be discharged.
§ 19.

Not to affect joint debtors.

ceedings in bankruptcy commenced after one year from the time this act shall go into operation, no discharge shall be granted to a debtor whose assets do not pay fifty per centum of the claims against his estate, unless the assent in writing of a majority in number and value of his creditors who have proved their claims is filed in the case at or before the time of application for discharge. Proceedings after one year. § 50.

Judgment for damages for a trespass (malicious imprisonment and whipping), is discharged by certificate, and bankrupt, if in arrest, must be discharged. Simpson, *S. D. Ill.*, *B. R.*, 2, 18.

Damages for deceit is debt created by fraud. Devoe, *Mass.*, *B. R.*, 2, 11.

A judgment upon debt created by fraud does not extinguish that quality so as to bring it under the operation of a discharge. Patterson, *S. D. N. Y.*, *B. R.*, 1, 58.

"Go into operation." This clause not to apply to case commenced prior to 1st January, 1869. And amended, requiring after 1st January, 1869, assets to equal fifty per centum of claims proved against his estate, upon which he shall be liable as *principal debtor*, unless, &c. *Act amending, &c., approved June 25, 1868.*

SEC. 34. *And be it further enacted*, That a discharge duly granted under this act shall, with the exceptions aforesaid, release the bankrupt from all debts, claims, liabilities, and demands which were or might have been proved against his estate in bankruptcy, and may be pleaded, by a simple averment that on the day of its date such discharge was granted to him, setting the same forth in *hæc verba*, as a full and complete bar to all suits brought on any such debts, claims, liabilities, or demands, and the certificate shall be conclusive evidence in favor of such bankrupt of the fact and the regularity of such discharge: Discharge hereunder; what to release. § 19. *Always provided*, That any creditor or creditors of said bankrupt, whose debt was proved or provable against the estate in bankruptcy who shall see fit to contest the validity of said discharge on Any creditor may contest validity of discharge within two years thereafter—proceedings to be taken by—effect of.

the ground that it was fraudulently obtained, may, at any time within two years after the date thereof, apply to the court which granted it to set aside and annul the same. Said application shall be in writing, shall specify which, in particular, of the several acts mentioned in section twenty-nine it is intended to give evidence of against the bankrupt, setting forth the grounds of avoidance, and no evidence shall be admitted as to any other of the said acts; but said application shall be subject to amendment at the discretion of the court. The court shall cause reasonable notice of said application to be given to said bankrupt, and order him to appear and answer the same, within such time as to the court shall seem fit and proper. If, upon the hearing of said parties, the court shall find that the fraudulent acts, or any of them, set forth as aforesaid by said creditor or creditors against the bankrupt, are proved, and that said creditor or creditors had no knowledge of the same until after the granting of said discharge, judgment shall be given in favor of said creditor or creditors, and the discharge of said bankrupt shall be set aside and annulled. But if said court shall find that said fraudulent acts, and all of them, set forth as aforesaid, are not proved, or that they were known to said creditor or creditors before the granting of said discharge, then judgment shall be rendered in favor of the bankrupt, and the validity of his discharge shall not be affected by said proceedings.

Rule S. D.
N. Y., 17.

Notice to
bankrupt.

Rule S. D.
N. Y., 16.

Judgment.
Rule 16, S.
D. N. Y.

Debts barred by statute limitation also discharged. *Kinsley, Mass., B. R.*, 1, 67; *Harden, Me., B. R.*, 1, 95.

Vague averments insufficient. Time, place, and facts, and so on, must be alleged. *McIntire, S. D. N. Y., B. R.*, 1, 115.

Trials not directed to be before jury, are to be had before commissioner or register. Hearing any Saturday in term, on four days' notice to clerk and parties. *S. D. N. Y. Rule, B. R.*, 1, 58.

PREFERENCES AND FRAUDULENT CONVEYANCES
DECLARED VOID.

SEC. 35. *And be it further enacted*, That if any person, being insolvent, or in contemplation of insolvency, within four months before the filing of the petition by or against him, with a ^{Preference within four months.} ^{§ 23.} view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person is insolvent, and that such attachment, payment, pledge, assignment, or conveyance is made in fraud of the provisions of this act, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefited; and if any person being ^{To person having reasonable cause, &c., void.} insolvent, or in contemplation of insolvency or bankruptcy, within six months before the filing of the petition by or against him, makes any payment, sale, assignment, transfer, conveyance, or other disposition of any part of his property to any person who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and that such payment, sale, assignment, transfer, or other conveyance is made with a view to prevent his property from coming to his assignee in bankruptcy, or to prevent the same from being dis- ^{Any transfer within six months.}

§ 39.

Prima facie
evidence of
fraud.Contract to
forbear op-
posing void

tributed under this act, or to defeat the object of, or in any way impair, hinder, impede or delay the operation and effect of, or to evade any of the provisions of this act, the sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property, or the value thereof, as assets of the bankrupt. And if such sale, assignment, transfer, or conveyance is not made in the usual and ordinary course of business of the debtor, the fact shall be *prima facie* evidence of fraud. Any contract, covenant, or security made or given by a bankrupt or other person with, or in trust for, any creditor for securing the payment of any money as a consideration for or with intent to induce the creditor to forbear opposing the application for discharge of the bankrupt, shall be void; and if any creditor shall obtain any sum of money or other goods, chattels, or security from any person as an inducement for forbearing to oppose, or consenting to such application for discharge, every creditor so offending shall forfeit all right to any share or dividend in the estate of the bankrupt, and shall also forfeit double the value or amount of such money, goods, chattels, or security so obtained, to be recovered by the assignee for the benefit of the estate.

"Reasonable cause," &c. Mortgagee knew that a prior mortgage existed; that debtor was unable to pay his employees at his mill. Held sufficient to show cause to believe. Also that mortgage being a conveyance not in regular course of business, was *prima facie* evidence of fraud. *Tuttle v. Truax*, assignee, *Minn., B. R.*, 1, ~~170~~ 169

A general assignment, untainted by fraud, and when bankrupt had no intention of taking bankrupt discharge, valid. *Sedgwick*, assignee, *v. Place*, *S. D. N. Y., B. R.*, 1, 204.

Where creditor loaned money on chattel mortgage opening account for his money in the name of and subject to the check of third party knowing that the property taken was subject to lien already, that a judgment was pending over debtor,—*Held*, suffi-

cient to show reasonable cause for believing debtor to be insolvent. *Merchant's N. Bank of Hastings v. Truax, &c., Minn.*, 1 B. R., 147. *SC 2d 122-42-3*

BANKRUPTCY OF PARTNERSHIPS AND CORPORATIONS.

SEC. 36. *And be it further enacted*, That where two or more persons who are partners in trade shall be adjudged bankrupt, either on the petition of such partners or any one of them, or on the petition of any creditor of the partners, a warrant shall issue in the manner provided by this act, upon which all the joint stock and property of the copartnership, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as are hereinbefore excepted; and all the creditors of the company, and the separate creditors of each partner, shall be allowed to prove their respective debts; and the assignees shall be chosen by the creditors of the company, and shall also keep separate accounts of the joint stock or property of the copartnership and of the separate estate of each member thereof; and after deducting out of the whole amount received by such assignee the whole of the expenses and disbursements, the net proceeds of the joint stock shall be appropriated to pay the creditors of the copartnership, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors; and if there shall be any balance of the separate estate of any partner, after the payment of his separate debts, such balance shall be added to the joint stock for the payment of the joint creditors; and if there shall be any balance of the joint stock after payment of the joint debts, such balance shall be divided and appropriated to and among the separate estates of the several partners, according to their

Petition by whom.
F. 2.
G. O. 16, 13.
Rule S. D.
N. Y., 1.

Warrant.
§ 42.

Proof of debts. §§ 19, 22, 23.

Assignee how chosen and duties.

§§ 17, 25, 23.

Separate creditors.

respective right and interest therein, and as it would have been if the partnership had been dissolved without any bankruptcy; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts; and the certificate of discharge shall be granted or refused to each partner as the same would or ought to be if the proceedings had been against him alone under this act; and in all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone. If such copartners reside in different districts, that court in which the petition is first filed shall retain exclusive jurisdiction over the case.

Discharge.

Preceding provisions applied.

Different districts.

A firm can be adjudicated only under general order 18. A voluntary petition subsequent to an erroneous adjudication of the firm, petitioner not having assented or been notified, taken as assent so as to validate former adjudication. *Lewis, S. D. N. Y., B. R., 1, 19.*

Two partners of dissolved firm residing in different districts must each file petition, then follow this section. Where petitioner states that all partners are bankrupt, all must be brought in under general order 18 before discharge. *Prankard, S. D. N. Y., B. R., 1, 51.*

Joint estate, distribution, &c. *Byrne, cited sub § 27.*

Where a petition requires adjudication of a firm, all the partners must be brought in under G. O. 18, or no discharge can be granted. *Little, S. D. N. Y., B. R., 1, 74.*

Unless petition requests adjudication of firm, other partners cannot have leave to join. *Boylan, S. D. N. Y., VI. Int. Rev. Rec., 28.*

Corporations may petition.

Form 3.

SEC. 37. *And be it further enacted,* That the provisions of this act shall apply to all moneyed, business, or commercial corporations and joint-stock companies, and that upon the petition of any officer of any such corporation or company, duly authorized by a vote of a majority of the corporators present at any legal meeting called for the purpose, or upon the petition of any cred-

itor or creditors of such corporation or company, made and presented in the manner hereinafter provided in respect to debtors, the like proceedings shall be had and taken as are hereinafter provided in the case of debtors; and all the provisions of this act which apply to the debtor, or set forth his duties in regard to furnishing schedules and inventories, executing papers, submitting to examinations, disclosing, making over, secreting, concealing, conveying, assigning, or paying away his money or property, shall in like manner, and with like force, effect, and penalties, apply to each and every officer of such corporation or company in relation to the same matters concerning the corporation or company, and the money and property thereof. All payments, conveyances and assignments declared fraudulent and void by this act when made by a debtor, shall in like manner, and to the like extent, and with like remedies, be fraudulent and void when made by a corporation or company. No allowance or discharge shall be granted to any corporation or joint-stock company, or to any person or officer or member thereof: *provided*, that whenever any corporation by proceedings under this act shall be declared bankrupt, all its property and assets shall be distributed to the creditors of such corporation in the manner provided in this act in respect to natural persons.

Proceeding provisions applied.

Duties of petitioning corporation

Rule S. D. N. Y., 1.

Form 65.

Void transfers.

§ 35.

OF DATES AND DEPOSITIONS.

SEC. 38. *And be it further enacted*, That the filing of a petition for adjudication in bankruptcy, either by a debtor in his own behalf, or by any creditor against a debtor, upon which an order may be issued by the court, or by a register in the manner provided in section four, shall be deemed

When proceedings are commenced.

and taken to be the commencement of proceedings in bankruptcy under this act; the proceedings in all cases in bankruptcy shall be deemed matters of record, but the same shall not be required to be recorded at large, but shall be carefully filed, kept, and numbered in the office of the clerk of the court, and a docket only, or short memorandum thereof, kept in books to be provided for that purpose, which shall be open to public inspection. Copies of such records, duly certified under the seal of the court, shall in all cases be *prima facie* evidence of the facts therein stated. Evidence or examinations in any of the proceedings under this act may be taken before the court, or a register in bankruptcy, *viva voce*, or in writing before a commissioner of the circuit court, or by affidavit, or on commission, and the court may direct a reference to a register in bankruptcy, or other suitable person, to take and certify such examination, and may compel the attendance of witnesses, the production of books and papers, and the giving of testimony, in the same manner as in suits in equity in the circuit court.

Proceedings
are matters
of record.
G. O. 1.

Copies of
records to
be evidence.

Examina-
tions, how
to be taken.

§§ 5, 7, 22,
26, 43. G.
O. 10.

Reference
may be or-
dered.

Witnesses
may be
compelled.

§§ 1, 4, 5, 7.

INVOLUNTARY BANKRUPTCY.

SEC. 39. *And be it further enacted*, That any person residing and owing debts as aforesaid, who, after the passage of this act, shall depart from the State, district, or Territory, of which he is an inhabitant, with intent to defraud his creditors, or being absent, shall, with such intent, remain absent; or shall conceal himself to avoid the service of legal process in any action for the recovery of a debt or demand provable under this act; or shall conceal and remove any of his property to avoid its being attached, taken, or sequestered on legal process; or shall make any assignment, gift, sale,

Who may
be adjudg-
ed bank-
rupt.

F. 56.

conveyance, or transfer of his estate, property, rights, or credits, either within the United States or elsewhere, with intent to delay, defraud, or hinder his creditors ; or who has been arrested and held in custody under or by virtue of mesne process or execution, issued out of any court of any State, district, or Territory, within which such debtor resides or has property, founded upon a demand in its nature provable against a bankrupt's estate under this act, and for a sum exceeding one hundred dollars, and such process is remaining in force and not discharged by payment, or in any other manner provided by the law of such State, district, or Territory applicable thereto, for a period of seven days ; or has been actually imprisoned for more than seven days in a civil action, founded on contract, for the sum of one hundred dollars or upwards ; or who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, shall make any payment, gift, grant, sale, conveyance, or transfer of money, or other property, estate, rights, or credits, or give any warrant to confess judgment, or procure or suffer his property to be taken on legal process, with intent to give a preference to one or more of his creditors, or to any person or persons who are or may be liable for him as indorsers, bail, sureties, or otherwise, or with the intent, by such disposition of his property, to defeat or delay the operation of this act ; or who, being a banker, merchant, or trader, has fraudulently stopped or suspended and not resumed payment of his commercial paper, within a period of fourteen days, shall be deemed to have committed an act of bankruptcy, and, subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt, on the petition of one or more of his creditors, the aggregate of whose debts provable under this act amount

Forms 54,
55, 56.

Rule S. D.
N. Y., 2,

Assignee's
duties.

to at least two hundred and fifty dollars, provided such petition is brought within six months after the act of bankruptcy shall have been committed. And if such person shall be adjudged a bankrupt, the assignee may recover back the money or other property so paid, conveyed, sold, assigned, and transferred contrary to this act, provided the person receiving such payment or conveyance had reasonable cause to believe that a fraud on this act was intended, or that the debtor was insolvent, and such creditor shall not be allowed to prove his debt in bankruptcy.

Objection that petitioning creditor represented no provable claim, takes precedence of the petition in decision. Moore, *S. D. O., B. R.*, 1, 123.

Petition must specify facts, days, &c., particularly. Cone, &c., *S. D. N. Y., N. Y. Times*, Aug. 1, 1868.

Creditor's petition may be amended after argument, and before judgment. Waite, &c., invol., *Mass., B. R.*, 1, 84; Craft, *S. D. N. Y., B. R.*, 1, 89; Houghton, *S. D. N. Y., B. R.*, 1, 121.

One that was filed before June 1, 1867, permitted to be amended as a matter of form only, not as to matters of substance not new to creditors. Crowley, *N. D. N. Y., B. R.*, 1, 137.

"Intent to delay," A question of fact to be proved. Motives established by *res gestæ*. "His father had a debt that would sweep off everything," proves insolvency. Unnecessary to show that a suspension or stoppage of payment was fraudulent. What evidence sufficient to establish. "Conveyance, with intent to delay, hinder, and defraud." "Preference by insolvent." "Suspension for fourteen days." Cowles, invol., *Minn., B. R.*, 1, 43.

Conveyance with intent to delay, &c. Insolvency not an element here. Dunham, &c., *B. R.*, 2, 10.

A mortgage of entire stock, if debtor be solvent, and not in contemplation of insolvency, not such. *Id.*

An instrument in writing, but unstamped, is void, and cannot be received in evidence of such a charge. *Id.*

Giving a mortgage upon whole stock, to secure a note coming due (which the debtor is unable to pay), is an act tending to delay creditors and to give a preference. Waite, *Mass., B. R.*, 1, 84.

No conclusive presumption that general assignment made before June, 1867, for benefit of creditors, was made to delay or hinder them. Intent to delay one creditor, not intent contemplated. Clafin v. Wells, *N. D. N. Y., Int. Rev. Rec.*, VI., 181.

Where no intent to defraud creditors, or to prevent property reaching assignee, assignment not act of bankruptcy. *Sedgwick, &c., v. Place, S. D. N. Y., B. R., 1, 204.*

"His creditors." All, not all but one. *Claffin v. Wells, N. D. N. Y., Int. Rev. Rec., VI., 181; Dunham, &c., S. D. N. Y., B. R., 2, 10.*

Contrary. *Langley, S. D. O., B. R., 1, 155.*

"Suffer," mere passiveness, or failure to file a voluntary petition when insolvent, and being sued, implies pressure, and is distinguishable from "procure." Herein decisions under Acts of 1801 and 1841, and of England, not applicable. And:

"Contemplation of insolvency." Knowledge of inability to pay debts as they accrue, distinguished from "*contemplation of bankruptcy*," which is an intention to do some act specified as an act of bankruptcy, as to file a petition. *Black v. Secor, S. D. N. Y., B. R., 1, 81; Craft, S. D. N. Y., B. R., 1, 90.*

Suffering a sale from inability to prevent, not an act of bankruptcy, although thereby creditor may be preferred. As sale by trustees under Internal Improvement Act of Florida. *Florida, &c. Railroad Co., N. D. Fla., B. R., 1, 196.*

Suffering property to be taken on fictitious judgment. *Schick, S. D. N. Y., Int. Rev. Rec., VI., 183.*

A person must be understood to intend the necessary consequences of his acts. *Black, &c., S. D. N. Y., B. R., 1, 181.*

Confession of judgment, and suffering property to be taken on legal process, being insolvent, an act of bankruptcy. *Craft, S. D. N. Y., B. R., 1, 89.*

When person permitted his property to be taken on legal process, he being insolvent, he must be presumed to intend to give a preference. *Haughton, S. D. N. Y., B. R., 1, 121.*

Sheriff unable to find debtor to serve summons. Others unable to serve order for examination. Friends say debtor has gone West, but refuse to state where. Verdict by jury against creditor, that he had committed act of bankruptcy. *Brock v. Hoppock, S. D. N. Y., B. R., 2, 2.*

Five days between the doing an act and the filing of a petition in bankruptcy sufficient to raise presumption of its being done in *contemplation of bankruptcy*. *Byrne, W. D. Pa., B. R., 1, 122.*

A warrant to confess judgment. The facts and character of debtor's business negating idea of *intent to prefer*, or to *defeat and delay*, insufficient to sustain petition. *Leeds, E. D. Pa., B. R., 1, 138.*

Stoppage or suspension for fourteen days need not be fraudulent. *Wells, N. D. N. Y., Int. Rev. Rec., VI., 181.*

Suspension and non-resumption for fourteen days must be fraudulent to constitute act of bankruptcy, but the act is *prima facie* evidence of fraud. *Jersey City Window Glass Co., N. J., B. R., 1, 113.*

Suspension for fourteen days, unaccompanied by fraud, is not an act of bankruptcy. Fraud must be shown by facts. Leeds, *E. D. Pa. B. R.*, 1, 138; Cone, &c., *S. D. N. Y., B. R.*, 2, 10.

Proceedings hereunder, on application of all (but one) proved claims dismissed, vacated, and annulled. Marshal directed to redeliver property. Application made to register. Miller, *W. D. Pa., B. R.*, 1, 106.

Fees to be paid by creditors until sufficient estate, §§ 4, 47; G. O. 29. In Pennsylvania, before adjudication, creditors deposit \$50, and give bonds in \$150. *B. R.*, 1, 147.

Same exemptions as under voluntary petition. Ellis, *E. D. Mo., B. R.*, 1, 154.

Order of court to debtor (on petition of any creditor) to appear and show cause why he should not be declared bankrupt, etc.

G. O. 16.
F. 57.
G. O. 1, 3,
14.
Injunction.

Warrant to arrest debtor and seize estate, when

SEC. 40. *And be it further enacted*, That upon the filing of the petition authorized by the next preceding section, if it shall appear that sufficient grounds exist therefor, the court shall direct the entry of any order requiring the debtor to appear and show cause, at a court of bankruptcy to be holden at a time to be specified in the order, not less than five days from the service thereof, why the prayer of the petition should not be granted; and may also, by its injunction, restrain the debtor, and any other person, in the meantime, from making any transfer or disposition of any of the debtor's property not excepted by this act from the operation thereof and from any interference therewith; and if it shall appear that there is probable cause for believing that the debtor is about to leave the district, or to remove or conceal his goods and chattels or his evidence of property, or make any fraudulent conveyance or disposition thereof, the court may issue a warrant to the marshal of the district, commanding him to arrest the alleged bankrupt and him safely keep, unless he shall give bail to the satisfaction of the court for his appearance from time to time, as required by the court, until the decision of the court upon the petition or the further order of the court, and forthwith to take possession provisionally of all

the property and effects of the debtor, and safely keep the same until the further order of the court. A copy of the petition and of such order to show cause shall be served on such debtor by delivering ^{Service.} the same to him personally, or leaving the same at ^{Form 59.} his last or usual place of abode ; or, if such debtor cannot be found, or his place of residence ascertained, service shall be made by publication, in such manner as the judge may direct. No further proceedings, unless the debtor appear and consent ^{Rule S. D. N. Y., 21.} thereto, shall be had until proof shall have been given, to the satisfaction of the court, of such service or publication ; and if such proof be not given on the return day of such order, the proceedings shall be adjourned and an order made that the notice be forthwith so served or published.

Injunction will not be dissolved until decision arrived at. Metzler & Cowperthwaite, *S. D. N. Y.*, VI. *Int. Rev. Rec.*, 75.

Interference with debtor's property not forbidden where lien. See §§ 14, 20, and cases. Remedy by injunction ; § 21, and cases. Form of order for injunction. Camp, *S. D. N. Y.*, 1 *B. R.*, 18.

Where a warrant to confess judgment had been given, and execution had been levied, an injunction restraining sale, &c., was sustained. Irving v. Hughes, *E. D. Pa.*, VI. *Int. Rev. Rec.*, 198 ; Same case, 2 *B. R.*, 20.

A levy, where judgment and execution made *bona fide*, sustained as a lien. Bornstein, *E. D. N. Y.*, VI. *Int. Rev. Rec.*, 223.

SEC. 41. *And be it further enacted*, That on ^{Appearance and proceedings.} such return day or adjourned day, if the notice has been duly served or published, or shall be waived by the appearance and consent of the debtor, the court shall proceed summarily to hear the allegations of the petitioner and debtor, and may adjourn the proceedings from time to time, ^{Trial by jury on demand of debtor.} on good cause shown, and shall, if the debtor on the same day so demand in writing, order a trial

G. O. 15.
F. 61, 62.
Rule S. D.
N. Y., 18,
22.
Debtor suc-
ceeds, when

Costs.
F. 60.
G. O. 81.

by jury at the first term of the court at which a jury shall be in attendance, to ascertain the facts of such alleged bankruptcy; and if, upon such hearing or trial, the debtor proves to the satisfaction of the court or the jury, as the case may be, that the facts set forth in the petition are not true, or that the debtor has paid and satisfied all liens upon his property, in case the existence of such liens were the sole ground of the proceeding, the proceedings shall be dismissed and the respondent shall recover his costs.

Trials, where not directed to be before jury, are to be on referee. Hearing on any Saturday—four days' notice. *S. D. N. Y., B. R.*, 1, 58.

Debtor must plead in writing and specially. Form 61 insufficient. *Drummond, Ind., B. R.*, 1, 10.

Form 61 is sufficient—amounts to general issue. *Dunham, &c., S. D. N. Y., B. R.*, 2, 9.

Where he pleads he did not intend to give preference, creditors had judgment, he must be presumed to intend consequence of his acts. *Sutherland, Or., B. R.*, 1, 140.

Replication to plea not required. *Dunham, &c., S. D. N. Y., N. Y. Times, Aug. 1, 1868.*

The language of this section does not relieve creditor from the *onus probandi*. *Brock v. Hoppock, S. D. N. Y., B. R.*, 2, 2.

When to be
adjudged
bankrupt.

F. 58.

G. O. 13.

Warrant.

F. 59. Rule
S. D. N. Y.,
5. § 11. &c.

SEC. 42. *And be it further enacted*, That if the facts set forth in the petition are found to be true, or if default be made by the debtor to appear pursuant to the order, upon due proof of service thereof being made, the court shall adjudge the debtor to be a bankrupt, and as such subject to the provisions of this act, and shall forthwith issue a warrant to take possession of the estate of the debtor. The warrant shall be directed, and the property of the debtor shall be taken thereon, and shall be assigned and distributed in the same manner, and with similar proceedings to those hereinbefore provided for the taking possession, assignment, and distribution of the property of the debtor upon his

own petition. The order of adjudication of bank-<sup>Order of ad-
judication.</sup>ruptcy shall require the bankrupt forthwith, or within such number of days, not exceeding five^{G. O. 4.} after the date of the order or notice thereof, as shall by the order be prescribed, to make and deliver, or transmit by mail, post-paid, to the messenger, a schedule of the creditors and an inventory of his estate in the form and verified in the manner required of a petitioning debtor by section eleven. If the debtor has failed to appear in person, or by attorney, a certified copy of the adjudication shall be forthwith served on him by delivery or publi-<sup>To be serv-
ed on debt-
or.</sup>cation in the manner hereinbefore provided for the service of the order to show cause; and if the^{G. O. 13.} bankrupt is absent, or can not be found, such schedule and inventory shall be prepared by the messenger and the assignee from the best information they can obtain. If the petitioning creditor<sup>Petitioning
creditor not
appearing.</sup> shall not appear and proceed on the return day, or adjourned day, the court may, upon the petition of any other creditor, to the required amount,^{G. O. 15.} proceed to adjudicate on such petition, without requiring a new service or publication of notice to the debtor.

After adjudication too late to move to set aside adjudication and settle with debtor. Trustees, under § 43, the only way then. Sherburne, *E. D. Mo.*, *B. R.*, 1, 155.

SUPERSEDING THE BANKRUPT PROCEEDINGS BY ARRANGEMENT.

SEC. 43. *And be it further enacted*, That if<sup>Three
fourths in
value of
creditors
may nomin-
ate trustee.</sup> at the first meeting of creditors, or at any meeting of creditors to be specially called for that purpose, and of which previous notice shall have been given for such length of time and in such manner^{F. 63.} as the court may direct, three fourths in value of the creditors whose claims shall have been proved

shall determine and resolve that it is for the interest of the general body of the creditors that the estate of the bankrupt should be wound up and settled, and distribution made among the creditors by trustees, under the inspection and direction of a committee of the creditors, it shall be lawful for the creditors to certify and report such resolution to the court, and to nominate one or more trustees to take and hold and distribute the estate, under the direction of such committee. If it shall appear to the court, after hearing the bankrupt and such creditors as may desire to be heard, that the resolution was duly passed and that the interests of the creditors will be promoted thereby, it shall confirm the same; and upon the execution and filing by or on behalf of three-fourths in value of all the creditors whose claims have been proved of a consent that the estate of the bankrupt be wound up and settled by said trustees according to the terms of such resolution, the bankrupt, or his assignee in bankruptcy, if appointed, as the case may be, shall, under the direction of the court, and under oath, convey, transfer, and deliver all the property and estate of the bankrupt to the said trustee or trustees, who shall, upon such conveyance and transfer, have and hold the same in the same manner, and with the same powers and rights, in all respects, as the bankrupt would have had or held the same if no proceedings in bankruptcy had been taken, or as the assignee in bankruptcy would have done had such resolution not been passed; and such consent and the proceedings thereunder shall be as binding in all respects on any creditor whose debt is provable, who has not signed the same, as if he had signed it, and on any creditor, whose debt, if provable, is not proved, as if he had proved it; and the court, by order, shall direct all acts and things needful to be done to

Property to
be convey-
ed to them.

Binding on
all provable
claims.

carry into effect such resolution of the creditors, and the said trustees shall proceed to wind up and settle the estate under the direction and inspection of such committee of the creditors, for the equal benefit of all such creditors; and the winding up and settlement of any estate under the provisions of this section shall be deemed to be proceedings in bankruptcy under this act; and the said trustees shall have all the rights and powers of assignees in bankruptcy. The court, on the application of such trustees, shall have power to summon and examine, on oath or otherwise, the bankrupt, and any creditor, and any person indebted to the estate, or known or suspected of having any of the estate in his possession, or any other person whose examination may be material or necessary to aid the trustees in the execution of their trust, and to compel the attendance of such persons and the production of books and papers in the same manner as in other proceedings in bankruptcy under this act; and the bankrupt shall have the like right to apply for and obtain a discharge after the passage of such resolution and the appointment of such trustees as if such resolution had not been passed, and as if all the proceedings had continued in the manner provided in the preceding sections of this act. If the resolution shall not be duly reported, or the consent of the creditors shall not be duly filed, or if, upon its filing, the court shall not think fit to approve thereof, the bankruptcy shall proceed as though no resolution had been passed, and the court may make all necessary orders for resuming the proceedings. And the period of time which shall have elapsed between the date of the resolution and the date of the order for resuming proceedings shall not be reckoned in calculating periods of time prescribed by this act.

Deemed to be proceedings in bankruptcy

Testimony

§§ 5, 7, 22, 26, 38.

G. O. 10.

§ 4.

Discharge.

§ 29.

PENALTIES AGAINST BANKRUPTS.

Offenses under this act, by debtor or bankrupt

SEC. 44. *And be it further enacted*, That from and after the passage of this act, if any debtor or bankrupt shall, after the commencement of proceedings in bankruptcy, secrete or conceal any property belonging to his estate, or part with, conceal, or destroy, alter, mutilate, or falsify, or cause to be concealed, destroyed, altered, mutilated, or falsified, any book, deed, document, or writing relating thereto, or remove, or cause to be removed, the same, or any part thereof, out of the district, or otherwise dispose of any part thereof, with intent to prevent it from coming into the possession of the assignee in bankruptcy, or to hinder, impede, or delay either of them in recovering or receiving the same, or make any payment, gift, sale, assignment, transfer, or conveyance of any property belonging to his estate, with the like intent, or shall spend any part thereof in gaming, or shall, with intent to defraud, willfully and fraudulently conceal from his assignee, or omit from his schedule any property or effects whatsoever; or if, in case of any person having, to his knowledge or belief, proved a false or fictitious debt against his estate, he shall fail to disclose the same to his assignee within one month after coming to the knowledge or belief thereof; or shall attempt to account for any of his property by fictitious losses or expenses; or shall, within three months before the commencement of proceedings in bankruptcy, under the false color and pretense of carrying on business and dealing in the ordinary course of trade, obtain on credit from any person any goods or chattels with intent to defraud, or shall, with intent to defraud his creditors, within three months next before the commencement of the proceedings in bank-

ruptcy, pawn, pledge, or dispose of, other than by *bona fide* transactions in the ordinary way of his trade, any of his goods or chattels which have been obtained on credit and remain unpaid for, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of the United States, shall be punished by imprisonment, with or without hard labor, for a term not exceeding three years.

How punished.

PENALTIES AGAINST OFFICERS.

SEC. 45. *And be it further enacted*, That if any judge, register, clerk, marshal, messenger, assignee, or any other officer of the several courts of bankruptcy shall, for anything done or pretended to be done under this act, or under color of doing anything thereunder, willfully demand or take, or appoint or allow any person whatever to take for him or on his account, or for or on account of any other person, or in trust for him or for any other person, any fee, emolument, gratuity, sum of money, or anything of value whatever, other than is allowed by this act, or which shall be allowed under the authority thereof, such person, when convicted thereof, shall forfeit and pay the sum of not less than three hundred dollars and not exceeding five hundred dollars, and be imprisoned not exceeding three years.

Offenses of officers acting hereunder.

Punishment thereof.

SEC. 46. *And be it further enacted*, That if any person shall forge the signature of a judge, register, or other officer of the court, or shall forge or counterfeit the seal of the courts, or knowingly concur in using such forged or counterfeit signature or seal for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a

Forgery of signature of officers of court; counterfeiting seal or documents to be felony

How punished.

false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, any such person shall be guilty of felony, and upon conviction thereof, shall be liable to a fine of not less than five hundred dollars, and not more than five thousand dollars, and to be imprisoned not exceeding five years, at the discretion of the court.

FEEES AND COSTS.

Register.
G. O. 12, 29,
30. §§ 4, 5.

G. O. 30.

SEC. 47. *And be it further enacted*, That in each case there shall be allowed and paid, in addition to the fees of the clerk of the court as now established by law, or as may be established by general order, under the provisions of this act, for fees in bankruptcy, the following fees, which shall be applied to the payment for the services of the register :—

For issuing every warrant, two dollars.

For each day in which a meeting is held, three dollars.

For each order for a dividend, three dollars.

For every order substituting an arrangement by trust deed for bankruptcy, two dollars.

For every bond with sureties, two dollars.

For every application for any meeting in any matter under this act, one dollar.

For every day's service while actually employed under a special order of the court, a sum not exceeding five dollars, to be allowed by the court.

For taking depositions the fees now allowed by law.

For every discharge when there is no opposition, two dollars.

Such fees shall have priority of payment over all other claims out of the estate, and before a warrant issues the petitioner shall deposit with the clerk, fifty dollars as security for the payment thereof; and if there are not sufficient assets for the payment of the fees, the person upon whose petition the warrant is issued shall pay the same, and the court may issue an execution against him to compel payment to the register.

Before any dividend is ordered, the assignee shall pay out of the estate to the messenger the following fees, and no more :—

Marshal. G.
O. 12, 29, 30.

First. For service of warrant, two dollars.

Second. For all necessary travel, at the rate of five cents a mile each way.

Third. For each written note to creditor named in the schedule, ten cents.

Fourth. For custody of property, publication of notices, and other services, his actual and necessary expenses upon returning the same in specific items, and making oath that they have been actually incurred and paid by him, and are just and reasonable, the same to be taxed or adjusted by the court, and the oath of the messenger shall not be conclusive as to the necessity of said expenses.

Oath not
conclusive.

For cause shown, and upon hearing thereon, such further allowance may be made as the court, in its discretion, may determine.

The enumeration of the foregoing fees shall not prevent the judges, who shall frame general rules and orders in accordance with the provisions of section ten, from prescribing a tariff of fees for all other services of the officers of courts of bankruptcy, or from reducing the fees prescribed in this section in classes of cases to be named in their rules and orders.

Further al-
lowance.

Questions may be raised by exception or by certificate. Sherwood, *E. Pa., B. R.*, 1, 74.

Fees provided for advertising notices. *New York Times* to receive for notices by marshal, \$5; by assignee, \$5; by clerk, \$7. *Commercial Advertiser*, for marshal and assignee's notices, \$4.25 each, and for clerk's notices, \$6, being for three publications, once a week. *Rule S. D. N. Y., Int. Rev. Rec.*, VI., 206.

[If the attorney's name be added, an additional charge is made. —Ed.]

A meeting for examination of bankrupt, \$3. Clark, *E. D. N. Y., Int. Rev. Rec.*, VI., 206.

Register's traveling fees, in an unopposed case, limited to \$12, though he may have expended more; and only three journeys, although he may have made more. Sherwood, *E. D. Pa., B. R.*, 1, 75.

"Special orders" are those not specifically required by the Act to be done by the register. One not entered, of course, in every case. Form 4 is not a special order. Sherwood, *E. D. Pa., B. R.*, 1, 74; Dean, *Ky.*, 1, *B. R.*, 22; Bellamy, *S. D. N. Y., Int. Rev. Rec.*, VI., 141; Robinson, *S. D. N. Y., B. R.*, 1, 49.

Register. *Not allowed.* \$5 for examining petition and schedules; certifying the same. Meeting for adjudication under order, Form 4. Forty-five cents for certified copy of any paper. G. O. 30 exceeds the power of the justices. Fee bill of 1853 allows ten cents per folio for copy, and fifteen cents per folio for certificate. For this paper, therefore, the charge is to be thirty-five cents. Nor for certified list of creditors who have proved their debts, unless dividend has been ordered. Nor for choice of assignee, F. 15. Nor for order and notice to him. Nor for making transfer of estate, and only \$1 for application for second and third meetings. Nor allowed for application for final meeting, when allowed for second and third. Nor more than \$3 for attending second and third meetings. Nor more than twenty cents per folio for depositions upon final examination. Nor for stationery, postage, incidental expenses, clerk hire, &c., and generally is entitled only to fees expressly allowed by law. The register is not entitled to the same fees as clerk for similar services in addition to his other fees. Dean, *Ky., B. R.*, 1, 26.

Same, and charges for application for first meeting; certified list of creditors to warrant; order to show cause, and copy to clerk disallowed; and except that the order of reference on petition for discharge is a special order, and register entitled to \$5 for meeting on return day, and \$5 for examination of bankrupt, and proceedings, instead twenty cents per folio. Robinson, *S. D. N. Y., B. R.*, 1, 49.

Clerk. *Allowed* for filing and entering papers, ten cents each, and also fifteen cents for noting on it day and hour of filing. *Not*

allowed, \$1 for Form 4, but only for copy as by bill of 1853. A paper may be composed of many sheets, and is one relating to one subject. Schedule and oath form one paper.

Marshal not allowed ten cents per folio for copying notices.

Assignee, when no assets, allowed \$10. Dean, *Ky.*, *B. R.*, 1, 26. In *S. D. N. Y.*. \$25. By courtesy.

Assignee's fees, § 28.

Fees by statute. *Clerk's Fees.* For issuing and entering every process, commission, summons, capias, execution, warrant, attachment, or other writ, except writ of venire summons, or subpoena for a witness, \$1.

For filing or entering every declaration, plea, or other paper, ten cents.

For administering every oath or affirmation to a witness or other person, except juror, ten cents.

For entering any return, order, rule, continuance, judgment, decree, or recognizance, drawing any bond, or making any record, certificate, return or report, for each folio fifteen cents. And for a copy of any such entry or record, or of any paper on file not exceeding one folio, ten cents, and for each additional folio ten cents.

For making docket and indices, and all other services on the trial or argument of a case where issue is joined and testimony given, including venire and taxing costs, \$3.

For the same, where issue is joined, and no testimony given, \$2.

For the same services, where cause is dismissed, discontinued, or judgment or decree rendered without issue, \$1.

In equity or admiralty causes only, process, pleadings, and decree, and all memoranda necessary to show jurisdiction and regularity, shall be entered on final record; and in case of appeal, copies of the proof, and of such entries and papers on file as may be necessary, may be certified up to the appellate court.

For affixing seal of court to any instrument when required, twenty cents.

For issuing writ of subpoena, twenty-five cents.

For receiving, keeping, and paying out money pursuant to statute or order of court, one per cent. on amount.

In cases removed by writ of error or appeal, charges for making docket or taxing costs, \$1.

Marshal's fees. For service of warrant, attachment, summons, capias, or other writ (except execution, venire, or summons of subpoena for witness), \$2 for each person served.

Such reasonable compensation for care of property as court may allow.

For service of writ of subpoena on witness, fifty cents, and no further fee for any copy, summons, or notice for witness.

For travel, in going, only six cents per mile, distance computed from place of service [if two or more persons, the more remote], to the place where process returned. When more than two services on the same person, marshal to have only traveling fees for two

services. Marshal has option to take this, or prove and receive actual traveling expenses.

For each bail bond, fifty cents.

For summoning appraisers, each fifty cents.

For every commitment or discharge of prisoner, fifty cents.

For serving venire, and summoning every twelve men as grand or petit jurors, \$4, or thirty-three and one-third cents each.

For executing a deed prepared by party or attorney, \$1. Drawing and executing a deed, \$5.

For copies of writs, or papers furnished at request of any party, ten cents per folio.

For disbursing money to jurors and witnesses, two per cent.

Commissioner's fees. Administering oath, ten cents; taking acknowledgement, twenty-five cents.

Attending reference in litigated matter in a civil cause at law, in equity, or in admiralty, in pursuance of an order of court, \$3 per day.

For witness fees, \$1.50 per day, and 5 cents per mile going and returning.

Juror's fees. \$2 per day during attendance. *Act of Cong.*, 26th Feb., 1863; 10 *Stat.*, 163.

OF MEANING OF TERMS, AND COMPUTATION OF TIME.

SEC. 48. *And be it further enacted,* That the word "assignee" and the word "creditor" shall include the plural also; and the word "messenger" shall include his assistant or assistants, except in the provision for the fees for that officer. The word "marshal" shall include the marshal's deputies; the word "person" shall also include "corporation"; and the word "oath" shall include "affirmation." And in all cases in which any particular number of days is prescribed by this act, or shall be mentioned in any rule or order of court of general order which shall at any time be made under this act, for the doing of any act, or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first and inclusive of the last day, unless the last day shall fall on a Sunday, Christ-

"Assignee,"
"creditor,"
"messenger,"
"marshal,"
"person,"
"corporation,"
"oath."

Exclude
first and
includes
last day.

mas day, or on any day appointed by the president of the United States, as a day of public fast or thanksgiving, or on the fourth of July, in which case the time shall be reckoned exclusive of that day also.

Sunday,
Christmas,
Thanksgiving,
4th of
July, &c.

DISTRICT AND TERRITORIAL COURTS.

SEC. 49. *And be it further enacted*, That all the jurisdiction, power, and authority conferred upon and vested in the district court of the United States by this act in cases in bankruptcy are hereby conferred upon and vested in the supreme court in the district of Columbia, and in and upon the supreme courts of the several Territories of the United States, when the bankrupt resides in the said district of Columbia or in either of the said Territories. And in those judicial districts which are not within any organized circuit of the United States, the power and jurisdiction of the circuit court in bankruptcy may be exercised by the district judge.

Assimilated
jurisdiction
of various
courts and
judges here
under.

Territorial
courts, &c.

SEC. 50. *And be it further enacted*, That this act shall commence and take effect as to the appointment of the officers created hereby, and the promulgation of rules and general orders, from and after the date of its approval: *Provided*, That no petition or other proceeding under this act shall be filed, received, or commenced before the first day of June, Anno Domini eighteen hundred and sixty-seven.

When act
to take ef-
fect.

Approved March 2, 1867.

Act in operation May 23, 1867, so as to render an act of that day sufficient foundation for a decree of adjudication of bankruptcy. Langley, *S. D. O.*, *B. R.*, 1, 155.

And act went into operation March 2. *Ermer v. Miller*, *Com. Pleas, Baltimore, Md.*, 1, *B. R.*, 78.

AMENDATORY ACT OF 1868.

A bill in amendment to an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

Be it enacted, &c., That the provisions of the second clause of the 33d section of said act shall not apply to cases of proceedings in bankruptcy commenced prior to the first day of January, 1869, and the time, during which the operation of the provisions of said clause is postponed, shall be extended until the said first day of January, 1869, and said clause is so amended as to read as follows :

In all proceedings in bankruptcy commenced after the first day of January, 1869, no discharge shall be granted to a debtor whose assets shall not be equal to fifty per centum of the claims proved against his estate, upon which he shall be liable as the principal debtor, unless the assent in writing of a majority in number and value of his creditors to whom he shall have become liable as principal debtor and who shall have proved their claims, be filed in the case at or before the time of the hearing of the application for discharge.

SEC. 2. *And be it further enacted,* That said act be further amended as follows: The phrase "presented or defended," in the 14th section of said act, shall read "prosecuted or defended." The phrase "nor resident debtors," in line 5, section 22, of the act as printed in the statute at large, shall read "non resident creditors;" that the word "or," in the next to the last line of the 39th

section of the act, shall read "and;" that the phrase "section 13," in the 42d section, shall read "section 11;" and the phrase "or spends any part thereof in gaming," in the 44th section of said act, shall read "or shall spend any part thereof in gaming;" and that the words "with the senior register or," and the phrase "to be delivered to the register," in the 47th section of said act, be stricken out.

SEC. 3. *And be it further enacted,* That the register in bankruptcy shall have power to administer oaths in all cases and in relation to all matters in which oaths may be administered by commissioners of the circuit courts of the United States, and such commissioners may take proof of debts in bankruptcy in all cases, subject to the revision of such proofs by the register and by the court, according to the provisions of said act.

Approved July 25th, 1868.

AMENDMENTS ADOPTED DECEMBER, 1867.

UNITED STATES SUPREME COURT.

General Order No. 13.

After words "special order of the district court" (6th line), insert, "Provided, however, that if any goods or effects so taken into possession as the property of the bankrupt shall be claimed by or in behalf of any other person, the marshal shall forthwith notify the petitioning creditor of such claim, and may, within five days after so giving notice of such claim, deliver them to the claimant or his agent, unless the petitioning creditor or party at whose instance possession is taken, shall, by bond with sufficient sureties, to be approved by the marshal, indemnify the marshal for the taking and detention of such goods and effects, and the expenses of defending against all claims thereto, and in case of such indemnity, the marshal shall retain possession of such goods and effects, and proceed in relation thereto as if no such claim had been made. And provided, further, that in case the petitioning creditor claims that any property not in possession of the bankrupt, belongs to him, and should be taken by the marshal, the marshal shall not be bound to take possession of the same, unless indemnified in like manner." And continue as in order.

General Order No. 32.

Add at end, "But the court, or the judge thereof, may, by special rule, in any case vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing."

GENERAL ORDERS.

WITH

THE FORMS IN BANKRUPTCY,

AS PROMULGATED BY

THE SUPREME COURT OF THE UNITED STATES.

GENERAL ORDERS IN BANKRUPTCY.

IN pursuance of the tenth section of the act entitled "An Act to establish a Uniform System of Bankruptcy throughout the United States," approved March 2, 1867, the justices of the supreme court of the United States have framed the following General Orders, which shall constitute the Rules of Practice and Procedure in Bankruptcy in district courts of the United States :

I.—Duties of Clerks of District Courts.

The clerks of the several district courts shall enter upon each petition in bankruptcy the day, and the hour of the day, upon which the same shall be filed, and shall also make a similar note upon every subsequent paper filed with them; and the papers in each case shall be kept in a file by themselves. No paper shall be taken from the files for any purpose except by order of the court. Every paper shall have indorsed upon it a brief statement of its character. The clerks shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced; and the number of each case shall be indorsed on every paper. The docket shall be so arranged that a brief memorandum of every proceeding in each case shall be entered therein, in a manner convenient for reference, and shall at all

times be open for public inspection. The clerks shall also keep separate minute-books for the record of proceedings in bankruptcy; in which shall be entered a minute of all proceedings in each case, either of the court or of a register of the court under their respective dates.

II.—*Process.*

All process, summons, and subpoenas shall issue out of the court under the seal thereof, and be tested by the clerk; and blanks with the signature of the clerk and seal of the court may, upon application, be furnished to the registers.

III.—*Appearance.*

Proceedings in bankruptcy may be conducted by the bankrupt in person in his own behalf, or by a petitioning or opposing creditor; but a creditor will only be allowed to manage before the court his individual interest. Either party may appear and conduct the proceedings by attorney, who shall be an attorney or counselor authorized to practice in the circuit or district court. The name of the attorney or counselor, with his place of residence and business, shall be entered upon the docket, with the date of the entry. All papers or proceedings offered by an attorney to be filed shall be indorsed as above required; and orders granted on motion shall contain the name of the party or attorney making the motion. Notices and orders which are not, by the act, or by these rules required to be served on the party personally, may be served upon his attorney.

IV.—*Commencement of Proceedings.*

Upon the filing of a petition in case of voluntary bankruptcy, or as soon as any adjudication of bankruptcy is made upon a petition filed in case of involuntary bankruptcy, the petition shall be referred to one of the registers in such manner as the district court shall direct; and the petitioner shall furnish the register with a copy of the papers in the case, and thereafter all the proceedings required by the act shall be had before him, except such as are required by the act to be had in the district court, or by special order of the district judge, unless some other register is directed to act in the case.

The order designating the register to act upon any petition shall name a day upon which the bankrupt shall attend before the register, from which date he shall be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the register a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court.

A copy of the order shall forthwith be sent by mail to the register, or be delivered to him personally by the clerk or other officer of the court.

V.—*Registers.*

The time when, and the place where, the registers shall act upon the matters arising under the several cases referred to them, shall be fixed by special order of the district court, or by the register, acting under the authority of a general order, in each case, made by the district court; and at such times and places the registers may perform the acts which they are empowered to do by the act, and conduct proceedings in relation to the following matters, when uncontested, viz: making adjudication of bankruptcy on petition of the debtor; directing, unless otherwise ordered by the court, the newspapers in which the notices shall be published by the messenger; administering oaths; receiving the surrender of a bankrupt; granting protection thereon; giving requisite direction for notices, advertisements, and other ministerial proceedings; taking proofs of claims; ordering payment of rates and taxes, and salary or wages of persons in the employment of the assignee; ordering amendments, or inspection, or copies, or extracts of any proceedings; taking accounts of proceeds of securities held by any creditor; taking evidence concerning expenses and charges against the bankrupt's estate; auditing and passing accounts of assignees; proceedings for the declaration and payment of dividends; and taxing costs in any of the proceedings, all of which shall be subject to the control of the court.

VI.—*Dispatch of Business.*

Every register, in performing the duties required of him, under the act, and by these orders, or by orders of the district court, shall use all reasonable dispatch, and shall not adjourn the business but for good cause shown. Six hours' session shall constitute a day's sitting if the business requires; and when there is time to complete the proceedings in progress within the day, the party obtaining any adjournment or postponement thereof may be charged, if the court think proper, with all the costs incurred in consequence of the delay.

VII.—*Examination and Filing of Papers.*

It shall be the duty of the register to examine the bankrupt's petition and schedules filed therewith, and to certify whether the same are correct in form; or, if deficient, in what respect they are so; and the court may allow amendments to be made in the petition and schedules upon the application of the petitioner, upon proper cause shown, at any time prior to the discharge of the bankrupt. At the close of the last examination of the bankrupt, the register having charge of the case shall file all the papers relating thereto in the office of the clerk of the district court, and these papers, together with those on file in the clerk's office, and the entries in the minute-book, shall constitute the record in each case; and the clerk shall cause the papers in each case to be bound together.

VIII.—*Orders by the Register.*

Whenever an order is made by a register in any proceeding in which notice is required to be given to either party before the order can be made, the fact that the notice was given, and the substance of the evidence of the manner in which it was given, shall be recited in the preamble to the order, and the fact also stated that no adverse interest was represented at the time and place appointed for the hearing of the matter upon such notice; and whenever an order is made where adverse interests are represented before the register, the fact shall be stated that the opposing parties consented thereto, or that the adverse interest represented made no opposition to the granting of such order.

IX.—*Notification to Assignee of his Appointment.*

It shall be the duty of the register, immediately upon the appointment of an assignee, as prescribed in sections 12 and 13 of the act (should he not be present at such meeting), to notify him by personal or mail service of his appointment; and in such notification the assignee so appointed shall be required to give notice forthwith to the court or register of his acceptance or rejection of the trust.

X.—*Testimony—How Taken.*

The examination of witnesses before a register in bankruptcy may be conducted by the party in person, or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in courts of law. The depositions upon such examination shall be taken down in writing by the register in the form of narrative, unless he determines that the examination shall be by question and answer in special instances, and when completed shall be read over to the witness and signed by him in the presence of the register. Any question or questions which may be objected to shall be noted by the register upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the question; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just. In case of refusal of a witness to attend, or testify before a register, the same proceedings may be had as are now authorized with respect to witnesses to be produced on examination before an examiner of any of the courts of the United States on written interrogatories.

XI.—*Minutes Before Register—Filing, etc.*

A memorandum made of each act performed by a register shall be in suitable form, to be entered upon the minute-book of the court, and shall be

forwarded to the clerk of the court not later than by mail the next day after the act has been performed. Whenever an issue is raised before the register in any proceedings, either of fact or law, he shall cause the same to be stated in writing in the manner required by the 4th and 6th sections of the act, and certify the same forthwith to the district judge for his decision. The pendency of the issue undecided before a judge shall not necessarily suspend or delay other proceedings before the register or court in the case.

XII.—*Accounts for Services of Register and Marshal.*

Every register shall keep an accurate account of his traveling and incidental expenses, and those of any clerk or other officer attending him in the performance of his duties in any case or number of cases which may be referred to him; and shall make return of the same under oath, with proper vouchers (when vouchers can be procured), on the first Tuesday in each month; and the marshal shall make his return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, publication of notices, and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable.

XIII.—*Marshal as Messenger.*

It shall be the duty of the marshal as messenger to take possession of the property of the bankrupt, and to prepare, within three days from the time of taking such possession, a complete inventory of all the property, and to return it as soon as completed. The time for making the inventory and return may be enlarged, under proper circumstances, by special order of the district court. He shall also, in case the bankrupt is absent, or cannot be found, prepare a schedule of the names and residences of his creditors, and the amount due to each, from the books or other papers of the bankrupt that may be seized by him under his warrant, and from any other sources of information; but all statements upon which his return shall be made, shall be in writing, and sworn to by the parties making them, before one of the registers in bankruptcy of the court, or a commissioner of the courts of the United States. In cases of voluntary bankruptcy, the marshal may appoint special deputies to act, as he may designate, in one or more cases, as messengers, for the purpose of causing the notices to be published and served as required in the 11th section of the act, and for no other purpose. In giving the notices required by the third subdivision of the 11th section of the act, it shall be sufficient to give the names, residences, and the amount of the debts (in figures) due the several creditors so far as known, and no more.

XIV.—*Petitions and Amendments.*

All petitions, and the schedules filed therewith, shall be printed, or written out plainly, and without abbreviation, or interlineation, except where such abbreviation or interlineation may be for the purpose of reference; and whenever any amendments are allowed, they shall be written and signed by the petitioner on a separate paper, in the same manner as the original schedules were signed and verified; and if the amendments are made to different schedules, the amendments to each schedule shall be made separately, with proper reference to the schedule proposed to be amended, and each amendment shall be verified by the oath of the petitioner in the same manner as the original schedules.

XV.—*Priority of Actions—(Involuntary Bankruptcy).*

Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within six months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy; and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consolidated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated.

XVI.—*Filing Petitions in different Districts.*

In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicile; and such petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions; and in case of two or more petitions against the same firm in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions; and in either case, the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same

shall be closed. In case two or more petitions for adjudication of bankruptcy shall be filed in different districts by different members of the same copartnership for an adjudication of the bankruptcy of said copartnership, the court in which the petition is first filed, having jurisdiction, shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed; and if such petitions shall be filed in the same district action shall be first had upon the one first filed.

XVII.—Concerning Redemptions of Property and Compounding Claims.

Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage, or other pledge, or deposit, or lien upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound any debts, or other claims, or securities due or belonging to the estate of the bankrupt, the assignee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor in the office of the clerk of the district court; and thereupon, the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given in some newspaper, to be designated by the court, at least ten days before the hearing, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition, authorizing such act on the part of the assignee.

XVIII.—Proceedings in Case of Copartnerships.

In case one or more members of a copartnership refuse to join in a petition to have the firm declared bankrupt, the parties refusing shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership, and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the copartnership is not insolvent, or has not committed an act of bankruptcy, and to take all other defenses which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy is made upon the petition, such copartner shall be required to furnish to the marshal, as messenger, a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made.

XIX.—*Duties of Assignees.*

The assignee shall, immediately on entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession; and all sales of the same shall be by public auction, unless otherwise ordered by the court. Every assignee shall keep full, exact and regular books of account of all receipts, payments, and expenditures of money by him, and shall make report to the court, within twenty days after receiving the deed of assignment, of the articles set off to the bankrupt by him, according to the provisions of the 14th section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the assignee within twenty days after the filing of the report

XX.—*Composition with Creditors—(Arbitration).*

Whenever an assignee shall make application to the court for authority to submit a controversy arising in the settlement of demands against the bankrupt's estate, or of debts due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the subject-matter of the controversy and the reasons why the assignee thinks it proper and most for the interest of the creditors that it should be settled by arbitration or otherwise, shall be set forth clearly and distinctly in the application; and the court, upon examination of the same, may immediately proceed to take testimony and make an order thereon, or may direct the assignee to give notice of the application, either by publication, or by mail, or both, to the creditors who have proved their claims, to appear and show cause, on a day to be named in the order and notice, why the application should not be granted, and may make such order thereon as may be just and proper.

XXI.—*Disposal of Property by Assignee.*

In making sales of personal property, the assignee shall give at least ten days' notice of the time and place of the sale, and of the articles to be sold, by advertisement in one or more newspapers, to be designated by the court or by a register, and by posted handbills, or otherwise, as he may think best for the interest of the estate, or as the court may order; and he shall give like notice of the sale of any real estate at least twenty days before such sale. Upon his application to the court, and for good cause shown, the assignee may be authorized to sell any specified portion of the bankrupt's estate at private sale. The court, by order in special cases, may dispense with newspaper and handbill advertisements. In making sale of the franchise of a corporation, it may be offered in fractional parts, or in certain numbers of shares, corresponding to the number of shares in the bankrupt corporation. And in making sale of the real estate of a bankrupt, the

assignee shall, unless otherwise ordered by the court, offer the same in lots or parcels, if it exists in separate parcels, in such manner as may be for the interest of the creditors of the estate.

XXII.—*Perishable Property.*

In all cases where goods or other articles come into possession of the messenger, or assignee, which are perishable, or liable to deterioration in value, the court may upon application, in its discretion, order the same to be sold, and the proceeds deposited in court.

XXIII.—*Service of Notice.*

The notice provided by the 18th section of the act, shall be served by the marshal, or his deputy, and notices to the creditors of the time and place of meeting provided by the section, shall be given through the mail by letter, signed by the clerk of the court.

Every envelope containing a notice sent by the clerk or messenger shall have printed on it a direction to the postmaster at the place to which it is sent, to return the same within ten days unless called for.

XXIV.—*Opposition to Discharge.*

A creditor opposing the application of a bankrupt for discharge, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file his specification of the grounds of his opposition, in writing, within ten days thereafter, unless the time shall be enlarged by order of the district court in the case, and the court shall thereupon make an order as to the entry of said case for trial on the docket of the district court, and the time within which the same shall be heard and decided.

XXV.—*Second and Third Meeting of Creditors.*

Whenever any bankrupt shall apply for his discharge, within three months from the date of his being adjudged a bankrupt under the provisions of the 29th section of the act, the court may direct that the second and third meetings of creditors of said bankrupt, required by the 27th and 28th sections of said act, shall be had on the day which may be fixed in the order of notice for the creditors to appear and show cause why a discharge should not be granted such bankrupt; and the notices of such meeting shall be sufficient if it be added to the notice to show cause, that the second and third meetings of said creditors shall be had before the register upon the same day.

that cause may be shown against the discharge, or upon some previous day, or days.

[In the southern district of New York second and third meetings are required only where there are assets. *B. R.*, 1, 26.]

XXVI.—*Appeals.*

Appeals in equity from the district to the circuit court, and from the circuit to the supreme court of the United States, shall be regulated by the rules governing appeals in equity in the courts of the United States. Any supposed creditor who takes an appeal to the circuit court from the decision of the district court rejecting his claim, in whole or in part, according to the provisions of the 8th section of the act, shall give notice of his intention to enter the appeal within ten days from the entry of the final decision of the district court upon his claim; and he shall file his appeal in the clerk's office of the circuit court within ten days thereafter, setting forth a statement in writing of his claim in the manner prescribed by said section; and the assignee shall plead or answer thereto in like manner within ten days after the statement shall be filed. Every issue thereon shall be made up in the court, and the cause placed upon the docket thereof, and shall be heard and decided in the same manner as other actions at law.

XXVII.—*Imprisoned Debtor.*

If at the time of preferring his petition the debtor shall be imprisoned, the court, upon his application, may order him to be produced upon *habeas corpus* by the jailor or any officer in whose custody he may be, before the register, for the purpose of testifying in any matter relating to his bankruptcy, and if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of *habeas corpus* to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and if so provable, he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge, the court shall cause notice to be served upon the creditor, or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order.

XXVIII.—*Deposit and Payment of Moneys.*

The district court in each district shall designate certain national banks, if there are any within the judicial district, or if there be none, then some other safe depository, in which all moneys received by assignees or paid into

court in the course of any proceedings in bankruptcy shall be deposited; and every assignee, and the clerk of said court, shall deposit all sums received by them severally, on account of any bankrupt's estate, in one designated depository, and every clerk and assignee shall make a report to the court of the funds received by him, and of deposits made by him, on the first Monday of every month. No moneys so deposited shall be drawn from such depository unless upon a check, or warrant, signed by the clerk of the court, or by an assignee, and countersigned by the judge of the court, or one of the registers designated for that purpose, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the assignee or the clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this rule shall be furnished to the depository so designated, and also the name of any register authorized to countersign said checks.

XXIX.—*Prepayment or Security of Fees.*

The fees of the register, marshal and clerk shall be paid or secured in all cases before they shall be compelled to perform the duties required of them by the parties requiring such service; and in the case of witnesses, their fees shall be tendered or paid at the time of the service of the summons or subpoena, and shall include their traveling expenses to and from the place at which they must be summoned to attend. The court may order the whole, or such portion of the fees and costs in each case, to be paid out of the fund in court in such case, as shall seem just.

XXX.—*As to Fees and Costs.*

To the Clerk of the Court:—For each notice required to be sent by mail when signed by the clerk, ten cents; the postage to be prepaid by the party required to give such notice.

To the Clerk and Register:—For every copy of any paper in proceedings in bankruptcy, twenty-five cents for certifying the same, and in addition thereto, ten cents for each folio of 100 words.

To the Register:—For every order made where notice is required to be given, and for certifying copy of the same to the clerk, one dollar.

For every certificate of question to be certified to the district judge, under the 4th and 6th sections of the act, one dollar.

For every proof of debt, twenty-five cents; and where testimony is taken, the fees prescribed by law may be added.

In cases where the debtor has no means, and makes proof to the satisfaction of the court, that he is unable to pay the costs prescribed by the act, and these orders, the judge in his discretion may direct that the fees and costs

therein shall not exceed the sum required by the act to be deposited with the clerk.

XXXI.—*Costs in Contested Adjudications.*

In cases of involuntary bankruptcy, where the debtor resists an adjudication, and the court, after hearing, shall adjudge the debtor a bankrupt, the petitioning creditor shall recover, to be paid out of the fund, the same costs that are allowed by law to a party recovering in a suit in equity; and in case the petition shall be dismissed, the debtor may recover like costs from the petitioner.

XXXII.—*As to Forms and Schedules.*

The several forms specified in the schedules annexed to these orders for the several purposes therein stated, shall be observed and used with such alterations as may be necessary to suit the circumstances of any particular case. In all cases where, by the provisions of the act, a special order is required to be made in any proceeding, or in any case instituted under the act in a district court of the United States, such order shall be framed by the court to suit the circumstances of the particular case; and the forms, hereby prescribed, shall be followed, as nearly as may be, and so far as the same are applicable to the circumstances requiring such special order. In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or of enforcing the rights and remedies given by it, the rules of equity practice established by the supreme court of the United States, shall be followed as nearly as may be. In proceedings at law instituted for the same purpose, the rules of the circuit court regulating the practice and procedure in cases at law, shall be followed as nearly as may be.

XXXIII.—*Omissions and Amendments.*

Whenever a debtor shall omit to state, in the schedules annexed to his petition, any of the facts required to be stated concerning his debts or his property, he shall state, either in its appropriate place in the schedules, or in a separate affidavit to be filed with the petition, the reason for the omission, with such particularity as will enable the court to determine whether to admit the schedules as sufficient, or to require the debtor to make further efforts to complete the same according to the requirements of the law; and in making any application for amendment to the schedules the debtor shall state under oath the substance of the matters proposed to be included in the amendment, and the reasons why the same had not been incorporated in his schedules as originally filed, or as previously amended. In like manner he may correct any statement made during the course of his examination.

FORMS IN BANKRUPTCY.

Form No. 1.

PETITION BY DEBTOR.

To the Honorable _____, *Judge of the District Court of the United*
States, for the _____ *District of* _____ *:—*

THE PETITION of _____, of the _____ of
in the county of _____, and State of _____, and district afore-
said, respectfully represents:—That he has
for _____ months next immediately preceding the filing of this petition,
at _____, within said judicial district; that he owes debts exceeding
the amount of three hundred dollars, and is unable to pay all of the same
in full; that he is willing to surrender all his estate and effects for the ben-
efit of his creditors, and desires to obtain the benefit of the act entitled
“An act to establish a Uniform System of Bankruptcy throughout the United
States,” approved March 2, 1867:

That the schedule hereto annexed, marked **A**, and verified by your pe-
titioner's oath, contains a full and true statement of all his debts, and (so far
as it is possible to ascertain) the names and places of residence of his credi-
tors, and such further statements concerning said debts as are required by
the provisions of said act:

That the schedule hereto annexed, marked **B**, and verified by your pe-
titioner's oath, contains an accurate inventory of all his estate, both real and
personal, assignable under the provisions of said act:—

WHEREFORE, YOUR PETITIONER PRAYS, that he may be adjudged by the
court to be a bankrupt, within the purview of said act; and that he may be
decreed to have a certificate of discharge from all his debts provable under
the same.

_____, *Solicitor, [or, Attorney,] &c.*

OATH TO FOREGOING PETITION.

[N. B.—If petitioner is not a citizen, the last clause of this oath should be omitted.]

UNITED STATES OF AMERICA.

District of _____, ss:

I, _____ the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath [or, affirmation] that the statements contained therein are true according to the best of my knowledge, information, and belief; and I do further make oath [or, affirmation] that I am a citizen of the United States of America, and that I will bear true faith and allegiance to the same.

_____, *Petitioner.*

Subscribed and sworn [or, affirmed] to, before me, this _____ day of _____
A. D. 18 _____.

*U. S. District Judge, [Register in Bankruptcy,
or, U. S. Commissioner.]*

(Petition by Debtor.)

SCHEDULE A.

(1.)

Statement of all Creditors who are to be paid in full, or to whom priority is secured, according to the provisions of the 28th section of said Act.

Order of payment; Preferred Claims.	Reference to Ledger or voucher.	Names of Creditors.	Residences and Occupations.	Amount.	Where and when contracted.	Nature and consideration of the debt, and whether contracted as copartner or joint contractor; and, if so, with whom.
1. Debts due to the United States, and taxes and assessments under the laws thereof.				\$ c.		
2. Debts due to the State of , and taxes and assessments under the laws of said State.						
3. Wages due clerk, servant, &c., to an amount not exceeding \$50, for labor performed within six months.						
4. Other debts preferred by said act.						

_____, *Petitioner.*

(Petition by Debtor.)

SCHEDULE A.

(2.)

Creditors holding Securities.

[N. B.—The particulars of Securities held, with dates of same, and when given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the 11th section of the Act, and whether contracted as co-partner or joint contractor with any other person; and, if so, with whom.]

Reference to Ledger or Voucher.	Names of Creditors.	Residences and Description.	When and where contracted.	Value of Securities		Amount of Debts.	
				\$	c.	\$	c.
Ledger [A.] page [150.]	[John Brown]....	Residing at Lien, by Judgment of Court, in the State of [Pennsylvania,] upon my Real Estate, situate in Township of , County of , in said State, (describing it).					
Ledger [B.] page [76.]	[Samuel Johnson]	Residing at Pledge of 150 shares, stock of [Cumberland Coal Company] a Company incorporated under the laws of the State of [Maryland,] and doing business at . Certificate of said stock transferred to said [Johnson.]					
Ledger [C.] page [186.]	[William Peters]	Residing at Mortgages upon my Real Estate in , made to secure his liability as indorser on certain Promissory Notes made by me, and described as follows : Or for Liability as Surety, Or for Liability as Bail, Or for any other Liability for which Mortgages may be given.					
Ledger [D.] page [146.]	[John Jones]....	Residing at Note of A. B., dated , at four months, for \$. Note of C. D., dated , at six months, for \$. Note of E. F., dated , at nine months, for \$. Delivered to said Jones, as Collateral Security for his debt, on the day of 186 .					
Ledger [E.] page [200.]	[George Smith].	Residing at Six bales of Cotton weighing pounds, valued at ; five bales of Wool weighing pounds, valued at ; 6 barrels Whisky, valued at . [Smith,] in pledge for his debt, on the day of 186 .					

[N. B.—The above examples will serve as a proper guide.]

_____, *Petitioner.*

(Petition by Debtor.)

SCHEDULE A.

(3.)

Creditors whose Claims are Unsecured.

[When the name and residence (or either) of any drawer, maker, indorser, or holder, of any bill or note, &c., are unknown, the fact must be stated, and also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property. The nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and place where such indebtedness accrued.]

Reference to Ledger or Voucher.	Names of Creditors.	Residences and Occupations.	Amount.	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as copartner or joint contractor, with any other person; and, if so, with whom.
			\$ c.		

_____, Petitioner.

(Petition by Debtor.)

SCHEDULE [A.

(4.)

Liabilities on Notes or Bills discounted which ought to be paid by the drawers, makers, or acceptors.

[N. B.—The date of the Notes or Bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the petitioner should be stated, and his business and place of residence. The same particulars as to Notes or Bills on which the petitioner is liable as indorser.]

Reference to Ledger or Voucher.	Names of Holders as far as known.	Place of Residence and Occupation.	Place where contracted.	Amount.		Nature of liability, whether same was contracted as copartner or joint contractor, or with any other person; and, if so, with whom.
				\$	c.	

_____. *Petitioner.*

(Petition by Debtor.)

SCHEDULE A.

(5.)

Accommodation Paper.

[N. B.—The dates of the Notes or Bills, and when due, with the names, residences, and business or occupation of the drawers, makers, and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holder are not known, the name of the last holder known to the petitioner should be stated, with his business and place of residence. Same particulars as to other commercial paper.]

Reference to Ledger or Voucher.	Names of Holders.	Residences of Holders and particulars of Notes or Bills.	Place where contracted.	Amount.	Whether liability was contracted as copartner or joint contractor, or with any other person; and, if so, with whom.
				\$ c.	

[N. B.—Here will follow oath to Schedule A., hereinafter prescribed.]

_____, *Petitioner.*

(Petition by Debtor.)

SCHEDULE B.

(1.)

Statement of all Real and Personal Estate and effects whatever, which are now in the possession, enjoyment, or under the control of the Petitioner, or which are held by any other person in trust for his use, or to the possession or enjoyment of which he is entitled at the date of filing petition.

[INTEREST IN LANDS.]

Particular description of Real Estate owned by Petitioner, or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated Value.

_____, Petitioner.

(Petition by Debtor.)

SCHEDULE B.**(2.)***Personal Property.*

	Dollars.	Cts.
<i>a.</i> —Cash on hand.....		
<i>b.</i> —Bills of Exchange, Promissory Notes, or Securities of any description, (each to be set out separately).....		
<i>c.</i> —Stock in Trade, in my business of , at , of the value of.....		
<i>d.</i> —Household Goods and Furniture, Household Stores, Wearing Apparel, and Ornaments of the Person.....		
<i>e.</i> —Books, Prints, and Pictures.....		
<i>f.</i> —Horses, Cows, Sheep, and other Animals.....		
<i>g.</i> —Carriages, and other Vehicles.....		
<i>h.</i> Farming Stock, and Implements of Husbandry.....		
<i>i.</i> —Shipping, and Shares in Vessels.....		
<i>k.</i> —Machinery, Fixtures, and Apparatus used in business; with the place where each is situated.....		
<i>l.</i> —Goods or Personal Property of any other description, with the place where each is situated.....		

_____, *Petitioner.*

(Petition by Debtor.)

SCHEDULE B.

(3.)

Choses in Action.

	Dollars.	Cts.
<i>a.</i> —Debts due Petitioner on open account.		
<i>b.</i> —Stocks in Incorporated Companies, and interest in Joint-stock Companies.		
<i>c.</i> —Policies of Insurance		
<i>d.</i> —Unliquidated Claims of every nature, with their estimated value.		

(Petition of Debtor.)

SCHEDULE B.

(4.)

Property in Reversion, Remainder, or Expectancy, including Property held in Trust for the Petitioner, or subject to any power or right to dispose of, or to charge.

[N. B.—A particular description of each interest must be entered. If all or any part of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed the amount realized from the proceeds thereof and the disposal of the same, as far as known to the petitioner.]

General Interest.	Particular Description.	Supposed value of my interest.
		Dolls. Cts.
Interest in Land.....	Real Estate and Leasehold Property, with locality, names, and descriptions of parties now enjoying the same, and the value thereof; also the nature of my interest therein, and from whom, and in what manner it is derived.....	
Personal Property.....	Personal Property, with locality, names, and descriptions of persons now enjoying the same; also the nature of my interest therein, and from whom, and in what manner it is derived.....	
Property in Money, Stock, Shares, Bonds, Annuities, &c. &c....	Annuities, Money in Public or other Funds, Shares in Railroad and other Companies, showing in whose names the same are standing, with names and descriptions of persons now enjoying the same; also the nature of my interest therein, and from whom and in what manner it is derived.....	
Rights and Powers.....	Rights and powers wherein I, or any other person or persons in trust for me or for my benefit, have any power to dispose of, charge, or exercise.....	
		Amount realized from proceeds of property conveyed.
		Dolls. Cts.
Property heretofore conveyed for the benefit of creditors.		
What portion of Debtor's property has been conveyed by deed of assignment, or otherwise, for benefit of creditors; date of such deed; name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to petitioner.	Description of property of debtor heretofore conveyed for benefit of creditor by deed of assignment, or otherwise: date of such deed or instrument of conveyance, with name and address of party to whom made; amount realized from same, and the disposal of such property, so far as known to petitioner.	

_____, Petitioner.

(Petition by Debtor.)

SCHEDULE B.

(5.)

A Particular Statement of the property claimed as Excepted from the operation of said Act, by the provisions of the 14th section thereof, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description, and present use.

[N. B.—The property claimed to be exempt under the laws of the State is to be described separately from the rest, and reference given to the statute of the said State creating the exception.]

		Valuation.	
		Dollars.	Cts.
Property claimed to be excepted from the operation of said act, and which may be set apart by the assignee under the 14th section			
Property claimed to be exempt by State laws; its valuation; whether real or personal estate; its description and present use; and under what State law exemption is claimed.....			

_____, *Petitioner.*

(Petition of Debtor.)

SCHEDULE B.**(6.)**

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in my possession, or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same:—

BOOKS.....

DEEDS.....

PAPERS, ETC.....

_____, *Petitioner.*

[N. B.—Here follows oath to Schedule B., as hereinafter prescribed.]

OATHS TO SCHEDULES A AND B.

[N. B.—The following forms of oaths to Schedules A and B of the petition by debtor are prescribed, and they are to be annexed to the same, respectively.]

OATH TO SCHEDULE A.

UNITED STATES OF AMERICA.

District of _____, ss:

On this _____ day of _____, A. D. 18____, before me personally came _____, the person mentioned in and who subscribed to the foregoing petition and schedule, marked **A**, respectively, and who being by me first duly sworn [or, affirmed], did declare the said schedule to be a statement of all his debts, &c., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

_____,
District Judge, [or, Register, or, U. S. Commissioner.]

OATH TO SCHEDULE B.

UNITED STATES OF AMERICA.

District of _____, ss:

On this _____ day of _____, A. D. 18____, before me personally came _____, the person mentioned in and who subscribed to the foregoing petition and schedule, marked **B**, respectively, and who being by me first duly sworn [or, affirmed], did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

_____,
District Judge, [or, Register, or, U. S. Commissioner.]

Form No. 2.

COPARTNERSHIP PETITION.

[In case of a copartnership, the form will be as follows:]

To the Honorable _____, Judge of the District Court of the United
States for the _____ District of _____:
THE PETITION OF _____, and _____, of _____,
in the county of _____, and state of _____, and district afore-

said, respectfully represents: That the said _____, and _____, copartners transacting business at _____, in the county of _____, and state of _____, and in said district, have _____ for the _____ months.

[Or,

THAT the said _____, and _____, members of a copartnership composed of themselves and one _____ of _____, in the county of _____, and state of _____, have _____ for the _____ months:—
next immediately preceding the filing of this petition at _____ within said judicial district; that the members of said copartnership owe debts exceeding the amount of *three hundred dollars*, and are _____ unable to pay all their debts in full; that they are willing to surrender all their estate and effects for the benefit of their creditors, and desire to obtain the benefit of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

That the schedule hereto annexed, marked **A**, and verified by their oaths, contains a full and true statement of all the debts of said copartnership, and, as far as possible, the names and places of residence of their creditors, and the further statements concerning such debts required by the provisions of said act.

That the schedule hereto annexed, marked **B**, verified by their oaths, contains an accurate inventory of all the estate of said copartnership as required by the provisions of said act.

And said _____ further states, that the schedule hereto annexed, marked **C**, verified by his oath, contains a full and true statement of all his individual debts; and, as far as possible, the names and places of residence of his creditors; and the further statements concerning such debts required by the provisions of said act; and that the schedule hereto annexed, marked **D**, verified by his oath, contains an accurate inventory of all his individual estate, as required by the provisions of said act.

And said _____ further states, that the schedule hereto annexed, marked **E**, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and the further statements concerning such debts required by the provisions of said act; and that the schedule hereto annexed, marked **F**, verified by his oath, contains an accurate inventory of all his individual estate as required by the provisions of said act.]

[N. B.—Similar clauses to be added for individual schedules of each copartner joining in the petition.]

WHEREFORE, YOUR PETITIONERS PRAY, that after due proceedings had, they may be adjudged by a decree of the court to be bankrupts within the purview of said act; and upon their compliance with the requirements of the said act, and all the orders and directions of the court made in pursuance thereof, they may be severally decreed to have a CERTIFICATE OF DISCHARGE FROM

ALL THEIR DEBTS provable under said act, and otherwise entitled to all the benefits thereof.

_____,
_____,
Petitioners.

[N. B.—The form of the oath to the petition is to be modified by employing the plural for the singular number, and by the addition of clauses to cover the schedules of each copartner.]

Form No. 3.

C O R P O R A T I O N P E T I T I O N .

[N. B.—If a petition in bankruptcy is filed by a corporation, an authenticated copy of a vote or other action of the stockholders (*or*, party or parties entitled to act in behalf of such corporation), authorizing such proceedings should be filed with the petition, and which, in substance, should be as follows.]

Statement to accompany petition of corporation (in bankruptcy).

AT A MEETING OF THE STOCKHOLDERS, [*or*, of the board of directors, *or* trustees, as the case may be,] of the _____ company, [*or*, association, *or*, Bank, *or*, Society,] a Corporation created by _____, of the State of _____, held at _____, in the county of _____, and State of _____, on this _____ day of _____, A. D. 18____, the condition of the affairs of said Corporation having been inquired into, and it being ascertained to the satisfaction of said meeting that the said corporation was insolvent, and that its affairs ought to be wound up, it was voted [*or*, resolved] by a majority of the copartners [*or*, stockholders, *or*, directors, *or*, trustees] present at such meeting, (which was duly called and notified for the purpose of taking action upon the subject aforesaid;) that _____ be, and _____ thereby—authorized empowered, and required to file a petition in the district court of the United States for the _____ district of _____, within which said corporation has carried on its business, for the purpose of having the same adjudged bankrupt; and that such proceedings be had thereon as are provided by the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

IN WITNESS WHEREOF, I have hereunto subscribed my name as president
{ ^{Seal} of Corporation. } [*or*, other officer or agent] of said corporation, and affixed
the seal of the same this _____ day of _____, A. D.
18____.

_____,
President [or, other officer] of said corporation.

[N. B.—In case of a corporation, the following changes are to be made in the form of petition already prescribed, viz.: The substitution of the name of the corporation for that of the individual petitioner, and the omission of the prayer for a discharge and the following passage substituted: "*And that like proceedings may be had in the premises as in said act are provided in respect to natural persons.*" The language of the oath to the corporation petition may be changed to correspond with the form of the petition.]

Form No. 4.

(And see Rule southern district of New York, 1, 4.)

ORDER OF REFERENCE TO REGISTER.

In the district court of the United States,
For the district of

In the matter of

} IN BANKRUPTCY.

A petitioner for adjudication in bankruptcy
of himself.

District of , ss. :

WHEREAS , of the county of , state of , and district aforesaid, has, on this day of , A. D. 18 , at o'clock m., filed in the office of the clerk of said court a petition for adjudication in bankruptcy against himself, according to the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

It is thereupon *ordered*, that said petition be referred to , one of the registers in bankruptcy of this court, to make adjudication thereon, and take such other proceedings therein as are required by said act; and *further*, that the said shall, on or before the day of , at o'clock m., filed with said register a duplicate copy of said petition, and the schedules thereto annexed, and that he attend before said register on said day, and thenceforth as said register may direct, to submit to such orders as may be made by said register, or by this court relating to his said bankruptcy.

And further, that until otherwise ordered by the court, the said register shall act upon the matters arising in this case at his office, at , at such times as he shall fix for that purpose.

Witness the honorable _____, judge of the said court, and
 seal thereof, at _____, in said district, on the _____ day of _____,
 A. D. 18 ____.

{ Seal of }
 { court. }

_____,
Clerk of District Court, for said district.

Form No. 5.

ADJUDICATION OF BANKRUPTCY UPON DEBTOR'S PETITION.

In the District Court of the United States,
 For the _____ District of _____

 In the matter of _____

By whom a petitioner for adjudication of
 bankruptcy was filed on the
 day of _____, A. D. 18 ____, in said court:

} IN BANKRUPTCY.

At _____, in said district,
 on the _____ day of _____, A. D. 18 ____.
 Before _____, one of the registers
 of said court in bankruptcy.

I, THE UNDERSIGNED, a register of said court in bankruptcy, upon good
 proof before me _____, taken, do find, that the said _____ has
 become a bankrupt within the true intent and meaning of the Act of Con-
 gress entitled "An Act to establish a uniform system of bankruptcy through-
 out the United States," approved March 2, 1867; and I do hereby declare
 and adjudge him a bankrupt accordingly.

_____,
Register in Bankruptcy.

[N. B.—When a debtor is declared a bankrupt upon a creditor's petition,
 the order should be made by the court and entered as an order of the court
 in substantially the form above prescribed.]

Form No. 6.

[See Rule S. D. N. Y., 4, 5.]

WARRANT TO MESSENGER.

(Voluntary Bankruptcy.)

In the District Court of the United States,
For the District of .

In the Matter of

IN BANKRUPTCY.

By whom a Petition for Adjudication of
Bankruptcy was filed on the day of
, A. D. 18 , in said court.

District of , ss :
To the Marshal of the District of :—

GREETING:—Whereas, a petition for adjudication of bankruptcy and for relief, under the act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, was, on the day of , 18 , filed by , of , in said district, upon which he hath been found and adjudged a bankrupt, there being no opposing party thereto:—YOU ARE, THEREFORE, HEREBY DIRECTED, AS MESSENGER, to publish times in the—[*Here name the newspapers in which the notice is to be published,*] (the first publication to be made forthwith), the following notice, to wit:—

THIS IS TO GIVE NOTICE: That on the day of , A. D. 18 , a warrant in bankruptcy was issued against the estate of , of , in the county of , and state of , who has been adjudged a bankrupt on his own petition; that the payment of any debts and delivery of any property belonging to such bankrupt, to him, or for his use, and the transfer of any property by him are forbidden by law; that a meeting of the creditors of said bankrupt to prove their debts, and to choose one or more assignees of his estate, will be held at a court of bankruptcy, to be holden [*here designate the place, and building, room or office where the court is to be held*] before , register, on the day of , A. D., 18 , at o'clock, M.

AND YOU ARE FURTHER DIRECTED to serve written or printed notice, *forthwith*, either by mail or personally [*those upon whom personal service is to be made should be designated by the court or register*] on all creditors upon the schedule filed with said bankrupt's petition [or, where names may be given

you in addition thereto by the debtor], at least ten days before the appointed meeting of said court, in the following form, to wit:—

To Mr. _____, of _____, county of _____, and state of _____,
 _____, creditor of _____, bankrupt.

You are hereby notified that a warrant in bankruptcy has been issued out of the district court of the United States for the _____ district of _____, against the estate of _____, adjudged a bankrupt upon his own petition; that the payment of any debts, and the delivery of any property belonging to said bankrupt, to him, or for his use, and the transfer of any property by him are forbidden by law; that a meeting of the creditors of said bankrupt, to wit: [here insert names of the several creditors of bankrupt, with their places of residence and amount of their debts, respectively, in the following form, *e. g.*:—

A. B. _____, Boston, Mass., | \$500]
 to prove their debts and choose one or more assignees of his estate, will be held at a court of bankruptcy to be holden on the _____ day of _____, A. D. 18 _____, at _____ o'clock, _____ M., at [here insert the place, building, room or office where the court will be held], before _____, register.

And have you then there this warrant, with your doings thereon.

Witness the Honorable _____, judge of the said court, and the
 { Seal of } seal thereof, at _____, in said district, on the
 the court. } day of _____, A. D. 18 _____.

Clerk of District Court, for said district.

Form No. 7.

RETURN OF MESSENGER TO ACCOMPANY WARRANT.

[N. B.—This return may be endorsed on the warrant, or follow the signature of the clerk.]

_____ district of _____, ss:
 At _____, on the _____ day of _____, A. D. 18 _____.—By virtue of the within warrant, I have caused the notice therein ordered to be published, by advertisement, _____ times in the newspapers within mentioned; the first publication of which was on the _____ day of _____, A. D. 18 _____, in [here mention newspaper in which first publication was had]. And I also, on the _____ day of _____, A. D. 18 _____, sent by mail or served personally upon the creditors and others named in said warrant a copy of the notice required thereby to be sent to, or served on them:—And all of said notices were according to the directions set out in said warrant.

FEES.

1. For service of warrant	\$2	00
2. For necessary travel miles, at 5 cents per mile each way		
3. For each written notice to creditor named in the schedule, 10 cents		
4. For actual and necessary expenses in publication of notices		
[N. B.—If there are any other necessary expenses, the same may be inserted in specific terms, numbering the same consecutively.]		

_____,
U. S. Marshal, as Messenger,
District of

District of _____, ss :

_____, A. D. 18 . Then personally appeared the _____, and made oath that the above expenses returned by him, in addition to his fees, were actually and necessarily incurred and paid by him, and that the same are just and reasonable.

Before me,

_____,
District Judge,
 [or, *Register in Bankruptcy.*]

Form No. 8.

REGISTER'S OATH OF OFFICE.

UNITED STATES OF AMERICA,

District of _____, ss :

I, _____, having been duly nominated and recommended by the Chief Justice of the supreme court of the United States, and appointed by the district judge of the United States for the _____ district of _____, as a register in bankruptcy under the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power or constitution within

the United States hostile or inimical thereto. And I do further swear, that to the best of my knowledge and ability, I will support and defend the constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter; and also, that I will not, during my continuance in office, be directly or indirectly interested in, or benefited by, the fees or emoluments arising from any suit or matter pending in bankruptcy in either the district or circuit court in this district. So help me God.

Subscribed and to, before me this day of , A. D. 18 .

_____,
District Judge.

Form No. 9.

OFFICIAL BOND OF REGISTER.

In the District Court of the United States,
For the District of .

IN BANKRUPTCY.

KNOW ALL MEN BY THESE PRESENTS: That we [*insert names and residences in full of bondsmen*] are held and firmly bound to the United States of America in the sum of dollars, lawful money of the United States, to be paid to the United States, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of , Anno Domini one thousand eight hundred and .

Whereas the said , having been on the day of , A. D. 18 , appointed by the honorable , judge of the district court of the United States for the district of , a register in bankruptcy, in and for said district, this bond is executed pursuant to the third section of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," ap-

proved March 2, 1867, and is conditioned for the faithful discharge of the duties pertaining to said office of register in bankruptcy.

In witness whereof, we have hereunto set our hands and seals this day of _____, A. D. one thousand eight hundred and _____.

_____, [L. S.]
_____, [L. S.]

Signed, sealed, and filed in office of the clerk of said district court.

Attest:

Clerk _____ District of _____.

[N. B.—The above bond to be indorsed with the approval of the judge of the district court, thus: "I HEREBY APPROVE THE WITHIN BOND, AND DECLARE THE SURETIES THEREON TO BE SATISFACTORY;" and the usual certificate of the clerk of the district, as to the exact time and date of filing.

Form No. 10.

[See Rule 5, S. D. N. Y.]

COMMON ORDER.

In the District Court of the United States,
For the _____ District of _____.

In the Matter of _____

Bankrupt .

} IN BANKRUPTCY.

At _____ in said district,
on the _____ day of _____, A. D. 18 ____.
Before Mr. _____, one of the registers
of said district court, in bankruptcy.

District of _____, ss.:

Upon the application of _____, of _____, in the county of _____, and

State of _____, there being no opposing interest, [or, the party, or parties, appearing assenting thereto,] It is ORDERED: [*Here insert the order.*]

Witness the Honorable _____, Judge of the said court, and the seal thereof, at _____, in said district, on the { Seal of } day of _____, A. D. 18 ____ the Court. }

_____,
Clerk of District Court, for said district.

Form No. 11.

CERTIFIED MEMORANDUM OF FIRST MEETING OF CREDITORS.

In the District Court of the United States,
For the _____ District of _____.

In the Matter of _____

Bankrupt .

} IN BANKRUPTCY.

At _____, in said district,
on the _____ day of _____, A. D. 18 ____.
Before Mr. _____,

Register in Bankruptcy.

District of _____, ss:

MEMORANDUM.—This being the day appointed by the court for the first meeting of creditors under the said bankruptcy, whereof the notice required in that behalf has been duly given, I, the undersigned, register of the said court in bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts and for the choice of assignee under the said bankruptcy; and I do hereby certify that the greater part in number and in value of the creditors who have proved their debts were present, or duly represented, and made choice of _____, of _____, in the county of _____, and State of _____, as the assignee of the said bankrupt's estate.

[Or,

Failed to make choice of an assignee of said bankrupt's estate, and there being no opposing interest, I appointed _____, of _____, in the county of _____, and State of _____, as assignee of the same.

[Or,

Failed to make choice of an assignee of said bankrupt's estate, and there being no opposing interest, I further certify to the court the failure to make such choice of assignee, in order that the court may take action in the premises

Register in Bankruptcy.

[N.B.—When the matter of appointment is referred to the court, the register may, if requested, certify the names of the persons proposed at the creditor's meeting and the votes given for each.]

Form No. 12.

ABSTRACTS OF PROCEEDINGS UNDER SECTION FOUR—FORM
OF MEMORANDUM TO BE RETURNED TO CLERK BY
REGISTER, OF HIS ACTION IN EACH CASE.

In the District Court of the United States,
For the District of

In the Matter of

IN BANKRUPTCY.

Bankrupt .

At _____, in said district,
on the _____ day of _____, A.D. 18 ____.
Before Mr. _____

Register in Bankruptcy.

District of _____, ss:

MEMORANDUM.—This day attended the first meeting of creditors of _____, the bankrupt aforesaid, at said _____, where choice was made of assignee as appears by the papers herewith returned. [*Here insert particular statement of all that was done before the register.*]

Register in Bankruptcy.

[N.B.—A memorandum of what is done in each case respectively must be returned on separate sheets of paper.]

Form No. 13.

CREDITORS WHO HAVE PROVED THEIR DEBTS AT FIRST MEETING.

In the District Court of the United States,
For the District of

In the Matter of

Bankrupt .

IN BANKRUPTCY.

At _____, in said district, on
the _____ day of _____, A.D. 18 ____.
Before Mr. _____,
Register in Bankruptcy.

District of _____, ss:

The following is a list of creditors who have this day proved their debts:—

Names of Creditors.	Residence.	Debts Proved.	
		Dolls.	Cts.

Register in Bankruptcy.

Form No. 14.

FORM OF SPECIAL LETTER OF ATTORNEY.

<p style="text-align: center;">In the Matter of</p> <p style="text-align: center;">Bankrupt .</p>	}	IN BANKRUPTCY.
--	---	----------------

To _____.

SIR: [*or*, Messrs., *or*, Gentlemen,] I, [*or*, we,] hereby authorize you, or any one of you, to attend the meeting of creditors in this matter, advertised or directed to be holden at _____, on the day of _____, before _____, or on the day advertised in the [*Name the Newspapers,*] or any adjournment thereof, and then and there for _____, and in _____ name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting; and in the choice of assignee, or assignees of the estate of the said bankrupt, and for _____, or _____, to accept such appointment of assignee.

Dated this _____ day of _____, A.D. 18 .

Witness to the signature of _____.

Exhibited to me this _____ day of _____, A.D. 18 .

_____,
Register in Bankruptcy.

Form No. 15.

CHOICE OF ASSIGNEES.

(First Meeting of Creditors.)

In the District Court of the United States,
For the District of .

In the Matter of	}	IN BANKRUPTCY.
Bankrupt .		

At , in said district,
on the day of , 18 .
Before Mr. ,
Register in Bankruptcy.

District of , ss :

MEMORANDUM.—This being the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given in the [*Here insert the names of the newspapers in which notice was published,*] and by special notice served personally, or through the mail. We, whose names are hereunder written, being the greater part in number and in value, of the creditors of the said , bankrupt aforesaid, present at this meeting, and who have proved our debts, have chosen, and do hereby nominate and choose [*Here insert the name, or names of assignees, with their places of residence, respectively*] to be the assignee of the said bankrupt's estate and effects, and we do desire that he [*or, they*] may be appointed such assignee, accordingly :

Names of Creditors above mentioned.	Residences of the same.	Amount of Debt.	
		Dolls.	Cts.

I [*or, we*] do hereby accept the said trust, [*or, appointment.*]

_____,
_____,
_____,
Assignee.

I, _____, a register of the said court in bankruptcy, do hereby approve of, and confirm the said choice of assignee.

_____, *Register in Bankruptcy.*

* _____ hereby appoint Mr. _____, of _____, to act as solicitor, and attorney in the above bankruptcy.

_____, *Register [or, Assignee.]*

_____, *District Judge.*

* N. B.—If no attorney be appointed, strike the latter form out, and when the appointment is made file an appointment as above, signed by the assignee.

The district judge will indorse hereon, in case of approval of the above, thus: "Approved."

Form No. 16.

NOTIFICATION OF APPOINTMENT OF ASSIGNEE.

In the District Court of the United States,

For the _____ District of _____.

In the Matter of

Bankrupt.

} IN BANKRUPTCY.

District of _____, ss:

To _____, of _____, in the county of _____,
and State of _____:

I DO HEREBY CERTIFY to you, that you were duly [*chosen or, appointed*] assignee [*or, one of the assignees*] of the estate and effects of the above-named bankrupt, at the first meeting of the creditors, on the _____ day of _____

, A. D. 18 , and I do hereby approve and confirm said election [or, appointment;] and I do further certify, that the greater part in value and in number of the creditors of said bankrupt who had proved their claims were present, or were duly represented at said meeting.

Dated at , the day of , A. D. 18 .

Judge of said District, [or, Register in Bankruptcy.]

[N. B.—If the appointment is made by the judge, the last clause should be omitted.]

Acceptance of Assignee.

[N. B.—To be indorsed on notification, or to follow it.]

TO WHOM IT MAY CONCERN: Be it known, that I hereby signify my acceptance of the trust of assignee of the estate of the above [or, within] named bankrupt this day of , A. D. 18 .

Form No. 17.

BOND OF ASSIGNEE.

In the District Court of the United States,
 For the District of .

<p style="text-align: center;">In the Matter of</p> <p style="text-align: right;">Bankrupt .</p>	}	IN BANKRUPTCY.
---	---	----------------

District of , ss :

KNOW ALL MEN BY THESE PRESENTS: That we, , of
 of ; and of ,
 are held and firmly bound unto the United States of America in the just
 and full sum of dollars, to the payment whereof, well and truly to

be made, we bind ourselves, our and each of our heirs, executors, and administrators.

Signed, sealed, and delivered at _____, this _____ day of _____, A. D. 18 _____.

The said _____, having been, on the _____ day of _____, A. D. 18 _____, by order of the district court of the United States for the _____ district of _____; IN BANKRUPTCY, appointed assignee of the estate of _____, a bankrupt, this bond is executed pursuant to the thirteenth section of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; and is conditioned for the due and faithful discharge of all _____ duties by the said _____, as such assignee, and in compliance with the orders and directions of the court in the matter of bankruptcy of the said _____.

Signed, sealed and delivered
in presence of —

_____, [L. S.]
_____, [L. S.]
_____, [L. S.]

[N. B.—To be indorsed on the above "On the _____ day of _____, A. D. 18 _____."]

Approved:

_____,
District Judge, [or, Register in Bankruptcy.]

Form No. 18.

ASSIGNMENT OF BANKRUPT'S EFFECTS.

In the District Court of the United States,
For the _____ District of _____.

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

District of _____, ss:

KNOW ALL MEN BY THESE PRESENTS, that _____, of the _____ of _____, in the county of _____, and state of _____, in said district ha been duly appointed assignee *If more than one assignee is appointed, insert ac-*

cordingly] in said matter. Now, THEREFORE, I, _____, judge of said district court, [*or*, register in bankruptcy of said district,] by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said _____, assignee, as aforesaid, all the estate, real and personal, of the said _____, bankrupt, aforesaid, including all the property, of whatever kind, of which he is possessed, or in which he was interested, or entitled to have on the _____ day of _____, A.D. 18 _____, with all his deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said Act.

TO HAVE AND TO HOLD all the foregoing premises to the said _____, and his heirs forever, IN TRUST, NEVERTHELESS, for the use and purposes, with the powers, and subject to the conditions and limitations set forth in said Act.

IN WITNESS WHEREOF, I, the said judge [*or*, the said register] have here-
 { L. S. } unto set my hand, and caused the seal of said court to be
 { of the Court. } affixed, this _____ day of _____, A. D. 18 _____.

District Judge, [or, Register in Bankruptcy.]

Form No. 19.

NOTICE OF ASSIGNEE OF HIS APPOINTNMENT.

(In Bankruptcy.)

District of _____, ss:
 At _____, the _____ day of _____, A. D. 18 _____.
 The undersigned hereby gives notice of his appointment as assignee of _____, of _____, in the county of _____, and state of _____, within said district, who has been adjudged a bankrupt upon his own petition, [*or*, on creditor's petition; *or*, as the case may be] by the district court of said district.
 _____, Assignee, &c.

To _____,
 _____.

Form No. 20.

EXEMPTED PROPERTY.

In the District Court of the United States,
For the District of .

In the Matter of	}	IN BANKRUPTCY.
Bankrupt .		

At , on the day of , 18 .

District of , ss :

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property, under the provisions of the 14th section of the act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867 :

General Head.	Particular Description.	Value.	
		Dolls.	Cts.
Necessary household and kitchen furniture.....			
Other articles and necessities.....			
Wearing apparel of bankrupt and his family....			
Equipments, if any, as a soldier.....			
Other property exempted by the laws of the United States.....			
Property exempted by State laws.....			

_____, District Judge [or, Register.]

Form No. 21.

PROOF OF DEBT, WITH SECURITY.

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

District of , ss. :

On this day of , A. D., 18 , before me, , a register in bankruptcy [*or*, United States Commissioner, or other proper officer] of said district, personally appeared , of , in the county of , and state of , and who, after being duly sworn [*or*, affirmed] and examined, at the time and place aforesaid, upon his oath, says that , the person by [*or*, against] whom a petition for adjudication of bankruptcy is filed, was at and before the filing of the said petition, and still , justly and truly indebted to this deponent [*or*, the firm of , composed of this deponent and , transacting business at ,] in the sum of dollars and cents, for which said sum of dollars and cents, or any part thereof, this deponent has not nor any person by order, or to this deponent's knowledge or belief, for use, received any security or satisfaction whatsoever, save and except the , hereinafter mentioned; that the claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, expressed or implied, has been made or entered into by or on behalf of this deponent to sell, transfer or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent [*or*, the firm of which this deponent is a member] for assignee, or any action on the part of this deponent, or any other person, in the proceedings under said act, has been, is, or shall be in any way affected, influenced,

or controlled ; [*Here insert a particular description of the debt, and also of the property held as security, and the estimated value of such property.*]

_____,
Deponent.

Subscribed and sworn [*or, affirmed*] to, at _____, on the
day of _____, A. D. 18 .

Before me _____,

District Judge [*or, Register in Bankruptcy,*
or, U. S. Commissioner.]

Received by me, at _____, this _____ day of _____, A. D. 18 .

_____,
Assignee.

Form No. 22.

DEPOSITION FOR PROOF OF DEBT WITHOUT SECURITY.

In the District Court of the United States,
For the _____ District of _____.

In the Matter of _____

} IN BANKRUPTCY.

Bankrupt .

District of _____, ss :

At _____, in the county of _____, and State of _____,
on the _____ day of _____, A. D. 18 , before me came _____, of
_____, in the county of _____, and state of _____, and
made oath [*or, affirmation*] and says, that the said _____, the person
whom a petition for adjudication of bankruptcy has been filed, at and
before the filing of the said petition, _____, and still _____ justly
and truly indebted to this deponent in the sum of, [*Here state the amount, and
describe the consideration of the debt, and whether any, and what, payments
have been made thereon,*] for which said sum of _____ dollars and
cents, or any part thereof, this deponent says that he has not, nor has
any person by his order, or to this deponent's knowledge or be-

lief, for use, had, or received any manner of satisfaction or security whatsoever.

And this deponent further says that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, express or implied, has been made or entered into by or on behalf of this deponent, to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent for assignee, or any action on the part of this deponent, or any other person in the proceedings under said act, has been, is, or shall be in any way affected, influenced or controlled.

_____,
Deposing Creditor.

Subscribed and sworn [or, affirmed] to before me,

_____,
Register in Bankruptcy.

Form No. 23.

DECLARATION FOR PROOF OF DEBT BY OFFICER OF CORPORATION.

In the District Court of the United States,
For the District of

In the Matter of

} IN BANKRUPTCY.

Bankrupt .

District of

ss.:

I, _____, of _____, in the county of _____, and State of _____, president, [or, cashier, or, treasurer, or, as the case may be] of _____, being a corporation incorporated by and under the laws of the State of _____, and carrying on business at _____, in the State of _____, being duly sworn, do solemnly declare that I am such officer, and duly authorized to make this proof, and that the statement of the _____,

between the said corporation and the said bankrupt, hereunto annexed, is a full, true, and complete statement of account between the said corporation and the said bankrupt; and that it is within my own knowledge that the debt thereby appearing to be due from the estate of said bankrupt to the said corporation was incurred on or before the day of , and for the consideration therein stated; and that to the best of my knowledge and belief the said debt still remains unpaid and unsatisfied. And I do further declare that said claim was not procured for the purpose of influencing the proceedings under said act, and that no bargain or assignment, express or implied, has been made or entered into by or on behalf of said corporation to sell, transfer or dispose of the said claim, or any part thereof, against such bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of such corporation, or of any person in the proceedings under said act was, is, or shall be, in any way, affected, influenced, or controlled.

President [or, as the case may be]
of the Company, [or, Association.]

Declared under oath at _____, this _____ day of _____, A. D. 18 ____.

Before me,

Register in Bankruptcy.

Form No. 24.

AFFIDAVIT FOR PROOF OF DEBT BY AGENT OR ATTORNEY.

In the District Court of the United States,
For the District of

In the Matter of

IN BANKRUPTCY.

Bankrupt .

District of _____, ss:

On this day of , A. D. 18 , before me, , register
in bankruptcy, [or, U. S. commissioner, or other proper officer,] of said dis-

trict, personally appeared _____, of _____, in the county of _____, and state of _____, attorney, [or, authorized agent,] of _____, in the county of _____, and state of _____, and after being by me duly sworn, [or, affirmed,] says that the said _____, the person by [or, against] whom a petition for adjudication of bankruptcy has been _____ filed, _____, at _____ and before the filing of the said petition, and still _____ justly and truly indebted to the said _____, in the sum of _____ dollars and _____ cents, [Here particularly describe the consideration of the debt, and whether any, &c.,] for which said sum of _____ dollars and _____ cents _____, or any part thereof, this deponent says that he has not, nor has _____ any person by his order, or to this deponent's knowledge or belief, for _____ use had or received any manner of satisfaction or security whatsoever. And this deponent further says, that the claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, express or implied, has been made, or entered into, by, or on behalf of such creditor to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of such creditor or assignee, or any action on the part of such creditor, or any other person in the proceedings under said act, has been, is, or shall be, in any way affected, influenced, or controlled. And this deponent further says, that he is duly authorized by his principal to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred, as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

Subscribed and sworn [or, affirmed] to, this _____ day of _____, 18 _____, before me.

_____,
District Judge, [or, Register in Bankruptcy;
or, U. S. Commissioner.]

Received by me, this _____ day of _____, A. D. 18 _____.

_____,
Assignee.

Form No. 25.

PROOF OF DEBT WITH SECURITY BY AGENT.

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

At , in said district,
on the day of , A. D. 18 .
Before Mr. ,
Register in Bankruptcy.

District of , ss :

On the day above mentioned, personally came , attorney [or, authorized agent] of , who being duly and examined at the time and place aforesaid, upon h oath, says that , the person whom a petition for adjudication of bankruptcy is filed, w at and before the filing of the said petition, and still justly and truly indebted to the said , in the sum of dollars and cents, for which said sum of dollars and cents, or any part thereof, this deponent has not, nor any person by order, to this deponent's knowledge on belief, for the use of said , received any security or satisfaction whatsoever, save and except the hereinafter mentioned. And this deponent further says that he is duly authorized by his principal to make this deposition, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated; and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied; that the claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, expressed or implied, has been made, or entered into, by or on behalf of such creditor to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of such creditor for assignee, or any action on the part of such creditor, or any other

person in the proceedings under said act, has been, is, or shall be in any way affected, influenced, or controlled.

[Here insert a description of the debt, and also of the property held as security, and the estimated value of such property.]

Subscribed and to, this day of , A. D. 18 .

Before me,

Register in Bankruptcy.

Received by me, this day of , A. D. 18 .
Assignee.

Form No. 26.

LETTER OF ATTORNEY TO REPRESENT CREDITOR.

In the District Court of the United States,
For the District of .

In the Matter of

IN BANKRUPTCY.

Bankrupt .

To _____,

Sir, [Messrs., or Gentlemen :]—

I, _____, of the _____ of _____, in the county of _____, and state of _____, do hereby authorize you [or, either of you] to attend the meeting, or meetings of creditors of the bankrupt aforesaid, advertised, or directed to be held at a court of bankruptcy at _____, on the _____ day of _____, A. D. 18 _____, the day notified in the warrant issued to the messenger by said court in said matter, or at such other place and time as may be appointed by the court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof, may be held, and then and there, from time to time, and as often as there may be occasion, for _____, and in name to vote for or against any proposal or resolution that may be then submitted under the 12th, 13th, 14th, 18th, 19th, 21st, 22d, 23d, 27th, 28th, 33d, 36th, 37th, 42d, and 43d sections of the act entitled "An act to es-

establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; and in the choice of assignee, or assignees, of the estate of the said bankrupt, and for _____, [or, either of us] to accept such appointment of assignee; and with like powers to attend and vote at any other meeting, or meetings, of creditors, or sitting, or sittings, of the court, which may be held therein for any of the purposes aforesaid, or the declaration of dividend, or for any other purpose in _____ interest whatsoever.

In witness whereof, _____ have hereunto signed _____ name ,
and affixed _____ seal the _____ day of _____, A. D. 18 ____ .
Signed, sealed, and delivered in _____, [L. s.]
presence of— _____, [L. s.]
_____ , [L. s.]

[NOTE.—The party executing the above letter of attorney may acknowledge the same before a judge, register, clerk, or commissioner of the court, or any officer authorized to take the acknowledgment of deeds or other instruments in writing.]

[N. B.—Upon the above letter of attorney should be indorsed the following certificate of the register, to wit: "Exhibited to me, this _____ day of _____, A. D. 18 ____ at _____ ."]

Register in Bankruptcy.

Form No. 27.

AFFIDAVIT OF LOST BILL OR NOTE.

In the District Court of the United States,
For the _____ District of _____ .

In the Matter of _____

} IN BANKRUPTCY.

Bankrupt .

District of _____, ss :

On this _____ day of _____, A. D. 18 ____ , at _____ , comes before _____ , of _____ , in the county of _____ , and state _____

of _____, and makes _____ and says that he has made a careful search for the bill of exchange [or, note,] the particulars whereof are under written, and which ha _____ been proved under this estate by _____, but that he, this deponent, has not been able to find the same, and verily believes that the same has been lost or mislaid; and this deponent further says that he has not, nor has the said _____, or any person or persons, to their use, to this deponent's knowledge or belief, negotiated the said bill, [or note,] nor in any manner parted with, or assigned, the legal or beneficial interest therein, or any part thereof; and that he, this deponent, is the person now legally and beneficially interested in the same, and entitled to receive for his own use all dividends in respect thereof.

Bill or Note above referred to.

Date.	Drawer or Maker.	Acceptor.	Sum.

Subscribed and to, before me, , on this day of ,
A. D. 18 .

Register, or U. S. Commissioner [or, other proper officer.]

Upon the above-named deponent signing the annexed letter of indemnity, and giving security to the satisfaction of the official assignee, I direct the dividend to be paid to him.

Register in Bankruptcy.

Form of notice of Indemnification to Register.

In the matter of _____, of _____, Bankrup to.

SIR: The bill [or, note] mentioned below, proved by _____, under this estate, having been lost or mislaid, and the following dividend having been

declared thereon, but not yet paid, viz:—, in consideration of your paying to or to order the dividend above mentioned, hereby undertake to indemnify you against all claims of any other person to the said dividend, or any part thereof; and from all loss, damage and expense, which you or your executors or administrators may sustain by reason of your making such payment to me; and if it should hereafter appear that the said sum of \$, or any part thereof, with the dividend already received or declared up to this day, exceed the amount of the bill [or, note] hereby engage to repay the same to you, or to the assignee, or assignees, of the above estate, with interest at the rate of per cent. per annum from this day.

Dated at , this , A. D. 18 .

Bill or Note above referred to.

Date.	Drawer or Maker.	Acceptor.	Sum.

_____,
_____,
Sureties of Creditor receiving Dividend.

To Mr. _____, *Register in Bankruptcy.*

Form No. 28.

NOTICE AND REQUEST OF ASSIGNEE.

Rule S. D. N. Y., 12.

(Second meeting of Creditors.)

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

To the Hon. ————, *Judge of the District Court,*
[or, *Register in Bankruptcy*] *in the above District.*

SIR: I, [or, we] the assignee of the estate of said bankrupt, respectfully represent, that have accepted the appointment of assignee of said estate; that the period of three months has elapsed since the date of the adjudication of bankruptcy in said case, and request that the court will order a general meeting of the creditors of said bankrupt, to which may make report of proceedings in trust, according to the provisions of the twenty-seventh section of the bankrupt act of March 2, 1867.

—————, *Assignee.*

Order thereon—By the Court or Register.

Upon the foregoing application of , assignee of the estate of , bankrupt, it is *Ordered* that a second general meeting of the creditors of said bankrupt be held at , in said district, on the day of , A. D. 18 , at o'clock m., at the office of , one of the registers in bankruptcy in said district, for the purposes named in the twenty-seventh section of the bankrupt act of March 2, 1867.

And it is further Ordered, That the assignee give notice of said meeting by sending written or printed notices by mail, post-paid, of the time and place of said meeting to all known creditors of said bankrupt; and that also notify the bankrupt to be present thereat; and shall also

publish notice of the time and place of said meeting on two different days in the newspaper called the _____, printed at _____, at least _____ days prior to said meeting.

Witness the Honorable _____, Judge of the said court, and
the seal thereof, at _____, in said district, on the
{ Seal of } day of _____, A. D. 18 ____
the Court.

Clerk of District Court, for said District.

Form No. 29.

FORM OF RETURN OF ASSIGNEE TO BE SUBMITTED TO THE
REGISTER IN BANKRUPTCY PRESIDING AT SAID
MEETING.

In the Matter of	}	IN BANKRUPTCY.
Bankrupt .		

District of _____, ss:

I, [or, we,] assignee of the estate of _____, a bankrupt, do certify that _____ have caused the notices required by the foregoing order to be published in the newspaper called the _____, printed at _____, on the _____ day of _____ A. D. 18 ____; and that _____ have caused written or printed notices of the time and place of said meeting to be sent by mail, post-paid, to all known creditors of said bankrupt. Said notices were mailed at the post-office in _____, on the _____ day of _____, A. D. 18 ____, at _____ days prior to the date appointed for the said meeting.

Assignee.

Subscribed and to, at , this day of , A. D. 18 .
Before me,

Register in Bankruptcy.

[N. B.—Like forms may be used for the third meeting of creditors, and for subsequent meetings, if such are ordered by the court.]

Form No. 30.

DIVIDEND MEETING.

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

At , in said district, on
the day of , A.D. 18 .
District of , ss :

MEMORANDUM.—That at a meeting of the bankrupt's creditors duly called and held this day for the purposes set forth in the 27th section of the act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, we, the undersigned, being the majority in value of the creditors of the said bankrupt present, or represented at this meeting, seeing that it appears by the accounts of the assignee , now filed, that there is a balance of dollars, standing to the credit of this estate, in the Bank of , and a balance of dollars in the hands of the , do *Resolve* that after payment of all proper costs, charges, and expenses, and after deducting and retaining a sum sufficient for all undetermined claims, which, by reason of the distant residence of the creditors, or for other reason satisfactory to us, have not been proved, and for other expenses and contingencies, the sum of dollars remains for distribution among the creditors of the above-named bankrupt, who have proved their debts against the said bankrupt's estate. And it was further *Resolved* by the undersigned creditors that the said sum be divided among the creditors who have proved their claims against said estate, and that such proceedings be had for declaring and paying said dividend as are required by the 27th section of said act.

Creditors.

I hereby certify to the above.

Register in Bankruptcy.

[N. B.—In case one-half in value of the creditors shall not be represented at such meeting, the fact shall be so stated in the memorandum, and the amount to be divided, and the order for a dividend, shall be made and signed by the assignee in accordance with the provisions of the 27th section of said act.]

[N. B.—Like forms may be used for the further proceedings provided for in the 28th section of said act.]

Form No. 31.

NOTICE OF DIVIDEND.

In the District Court of the United States,
For the District of

In the Matter of

Bankrupt .

IN BANKRUPTCY.

At _____, on the _____ day of _____, A. D. 18 ____.

SIR: I hereby inform you that you may, on application at my office, _____, on the _____ day of _____, or on any day thereafter, between the hours of _____, receive a warrant for the _____ dividend due to you out of the above estate. If you cannot personally attend, the warrant will be delivered to your order on your filling up and signing the subjoined letter. The bills and securities, if any, exhibited at the time of the proof of your debt must be produced to me before the warrant of dividend can be received. I am, sir, your obedient servant.

Assignee.

To

18 .

Subjoined letter authorizing assignee to give warrant to party other than creditor

To Mr.

Assignee in Bankruptcy of the estate of _____, Bankrupt.

SIR: [*or*, MESSRS.] Please to deliver to _____ the dividend warrant payable to me out of the above estate.

Yours, &c.,

Creditor.

Form No. 32.

LIST OF PROOFS AND CLAIMS FOR DIVIDEND.

In the District Court of the United States,
For the District of .

In the Matter of	}	IN BANKRUPTCY.
Bankrupt .		

At , in said district,
on the day of , 18 .

A list of debts proved and claimed under the Bankruptcy of , aforesaid, with dividend, at the rate of per cent. this day declared thereon by Mr. , one of the Registers in Bankruptcy of the said District Court.

No.	Creditors. To be placed alphabetically, and the names of all the parties to the proof to be carefully set forth.	Sum proved. The claims to be set forth in the same manner at the end of the whole of the profits.		Dividend.	
		Dollars.	Cents.	Dolls.	Cts.

— — — — —, Register in Bankruptcy.

Form No. 33.

LIST OF PROOFS OF DEBTS AND CLAIMS FOR ASSIGNEE TO PAY DIVIDENDS.

In the District Court of the United States,
For the District of _____

In the Matter of _____
Bankrupt. } IN BANKRUPTCY.

At _____, in said district, on the _____ day of _____, 18 ____.

District of _____, ss:
A List of Debts proved and claimed under the Bankruptcy of _____, with the Dividend at the rate of _____ per cent., this day declared thereon by Mr. _____, one of the Registers in Bankruptcy of said Court.

No.	Creditors. To be placed alphabetically, and the names of all the parties to the proof to be carefully set forth.	Residence and Description.	Sums proved or claimed. Claims to be set forth in the same manner after the whole of the proofs.		Dividend.		Bills and Securities exhibited.									
			Dolls.	Cts.	Dolls.	Cts.	Date of Bill or Note.	Drawer or Maker.	Acceptor.	Indorser.	Sum.					
															Dolls.	Cts.

[N. B.—The dividends will be paid from this list; it is therefore required to be carefully extracted from the proceedings, signed by the Register, and delivered to the Assignee.] _____, *Register in Bankruptcy.*

Form No. 34.

PETITION OF ASSIGNEE FOR POWER TO RELIEVE PROP-
ERTY FROM LIEN.

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

To _____.

, assignee of the estate of said bankrupt, respectfully represents that a certain portion of said bankrupt's estate, to wit: [*Here describe the estate or property and its estimated value,*] is subject to a mortgage, [*Describe the mortgage,*] or to a conditional contract, [*Describing it,*] or to a lien, [*Describe the origin and nature of the lien,*] or, (if the property be personal property,) has been pledged or deposited and is subject to a lien for, [*Describe the nature of the lien,*] and that according to the best judgment of your petitioner it would be for the interest of the creditors of said estate that said property should be redeemed and discharged from the lien thereon. Wherefore pray that may be empowered to pay out of the assets of said estate in hands the sum of , being the amount of said lien, in order to redeem said property therefrom.

Dated this day of , A. D. 18 .

_____, Assignee.

[N. B.—If the prayer is for a sale of the property, strike out all after the words "*judgment of your petitioner,*" and insert "it would be for the interest of the creditors of said estate that said property should be sold, subject to said mortgage, lien, or other incumbrance. Wherefore he prays that he may be authorized to make sale of said property, subject to the incumbrance thereon, in the manner prescribed by the general order for the sale of property not incumbered."

Form No. 35.

ASSIGNEE'S RETURN WHERE THERE ARE NO ASSETS.

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

IN BANKRUPTCY.

At _____, in said district,
on the _____ day of _____, A. D. 18 ____:

District of _____, ss :

On the day aforesaid, before me comes _____, of _____, in the county of _____, and state of _____, and makes _____, and says that he, this deponent, as assignee [or, one of the assignees] of the estate and effects of the above named bankrupt, neither received nor paid any moneys on account of the estate.

Subscribed and to, at , this day of , A. D. 18 .

Before me,

Register in Bankruptcy.

Form No. 36.

ASSIGNEE'S NOTICE FOR SETTLEMENT OF HIS ACCOUNTS PREPARATORY TO FINAL DIVIDEND.

In the District Court of the United States,
For the District of

In the Matter of

Bankrupt .

IN BANKRUPTCY.

At _____, on the _____ day of _____, A. D. 18 ____.

To _____,

S₁R :

This is to give you notice that I have filed my final accounts as assignee

of the estate of _____, bankrupt, in said court, and that on the day of _____ next, I shall apply to said court for the settlement of my said accounts, and for a discharge from all liability as assignee of said estate in accordance with the provisions of the twenty-eighth section of the bankrupt act of March 2, 1867.

Yours, &c., _____, Assignee.

Form No. 37.

AFFIDAVIT TO BE MADE BY ASSIGNEE.

In the District Court of the United States,
For the _____ District of _____.

In the Matter of _____

} IN BANKRUPTCY.

Bankrupt .

District of _____, ss.:

On this _____ day of _____, A. D. 18____, before me comes _____, of _____, in the county of _____, and state of _____, and makes _____, and says that he, this deponent, was, on the _____ day of _____, A. D. 18____, appointed assignee of the estate and effects of the above named bankrupt, and that as such _____ he has conducted the settlement of the said estate. That the account hereto annexed containing _____ sheets of paper, the first sheet whereof is marked with the letter _____ [Reference may here also be made to any prior account filed by deponent] is true, and such account contains entries of every sum of money received by deponent, on account of the estate and effects of the above-named bankrupt, and that the payments purporting in such account to have been made by deponent have been so made by him. And he asks to be allowed for said payments and for charges of settlement as set forth in said accounts.

_____, Assignee.

Sworn to and subscribed at _____, in said _____ district of _____, this day of _____, A. D. 18____.

Before me,

_____,
Register in Bankruptcy.

Form No. 39.

ORDER OF SETTLEMENT AND DISCHARGE OF ASSIGNEE.

In the District Court of the United States,
For the District of .

<p style="text-align: center;">In the Matter of</p> <p style="text-align: right;">Bankrupt .</p>	}	IN BANKRUPTCY.
--	---	----------------

District of , ss :

The foregoing account having been presented for allowance, and having been examined and found correct, it is *Ordered*, That the same be allowed, and that the said assignee be discharged according to the provisions of the 28th section of the Bankrupt Act of March 2, 1867.

_____,
District Judge [or, *Register*.]

Form No. 40.

PETITION FOR REMOVAL OF ASSIGNEE.

In the District Court of the United States,
For the District of .

<p style="text-align: center;">In the Matter of</p> <p style="text-align: right;">Bankrupt .</p>	}	IN BANKRUPTCY.
--	---	----------------

To the Hon.

Judge of the District Court, for the District of .
District of , ss :

The petition of , one of the parties interested in the settlement of said bankrupt's estate, petitioning, respectfully represents that ,

heretofore appointed assignee of said bankrupt's estate, [*Here set forth the particular cause or causes for which such removal is requested.*]

Wherefore pray that notice may be served upon said assignee as aforesaid, to show cause, at such time as may be fixed by the court, why an order should not be made removing him from said trust.

Subscribed and sworn [*or, affirmed*] to, this _____ day of _____,
 A. D. 18 ____, at _____, in said district.
 Before me, _____,
Register in Bankruptcy.

Form No. 41.

NOTICE OF MOTION FOR REMOVAL.

In the District Court of the United States,
 For the _____ District of _____.

In the Matter of _____

Bankrupt .

} IN BANKRUPTCY.

At _____, on the _____ day of _____, A. D., 18 __.
 To _____,
Assignee of the Estate of _____, Bankrupt.

You are hereby notified to appear before this court, at _____, on the _____ day of _____ A. D. 18 __, at _____ o'clock _____ m., to show cause (if any you have) why you should not be removed from your trust as assignee as aforesaid, according to the prayer of the petition of _____, one of the parties interested in said estate, filed in this court on the _____ day of _____, A. D. 18 __, in which it is alleged, [*Here insert the allegation of the petition.*]

Hereof fail not.

_____,
Clerk, &c.

[N. B.—To be served by the marshal, and return to be made in usual form.]

Form No. 42.

ORDER FOR MEETING OF CREDITORS TO CONSIDER QUESTION OF REMOVAL OF ASSIGNEE AND APPOINTMENT OF HIS SUCCESSOR.

In the District Court of the United States,

For the District of .

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

At , on the day of , A. D. 18 .

District of , ss :

WHEREAS , of , has filed his petition in this court for the removal of , heretofore appointed assignee of the estate of said , bankrupt, setting forth, [*Here insert the allegations of the petition.*]

It is *Ordered*, That the clerk of this court give notice to the creditors of , by letter to be mailed to each within days after the date of this order, that a meeting of said creditors will be held at , on the day of , A. D. 18 , at o'clock M., at which Mr. , one of the registers of this court, will preside, for the purpose of considering the question of recommending such removal, and appointing a successor in said trust.

_____,
District Judge.

[N. B.—If the meeting is called upon an application of a majority in number and value of the creditors of the bankrupt, the form may be varied accordingly.]

[The vote for removal is substantially the same form as that for the appointment of assignee in form No. 15, substituting "removal" for "appointment;" and the form of vote for choice of new assignee will be substantially the same as the form referred to.]

Form No. 43.

ORDER FOR REMOVAL OF ASSIGNEE.

In the District Court of the United States,
For the District of

In the Matter of

IN BANKRUPTCY.

Bankrupt .

At _____, on the _____ day of _____, 18 ____.

District of _____, ss:

Whereas _____, of _____, did, on the _____ day of _____, A. D. 18____, present his petition to this court, stating as therein set forth, and praying that _____, the assignee of the estate of said _____, bankrupt, might be removed:

Now, THEREFORE, upon reading the said petition of the said _____, and the evidence submitted therewith, and upon hearing what was alleged by Mr. _____, of counsel on behalf of said petitioner, and by Mr. _____, of counsel for _____, assignee as aforesaid, and upon the evidence submitted on behalf of said assignee.

It is *Ordered*, That the said _____ be removed from the trust of assignee of the estate of said bankrupt, and that the costs of the said petitioner incidental to said petition be paid by said _____, assignee, [or, out of the estate of the said _____, subject to prior charges.]

Witness the Honorable _____, judge of the said court, and
the seal thereof, at _____, in said district, on the
{ Seal of } day of _____ A. D. 18 ____
{ the Court, }

Clerk of District Court for said district.

Form No. 44.

FURTHER ORDER.

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

At , on the day of , A. D. 18 .

District of , ss.:

WHEREAS , heretofore appointed assignee of the estate of said bankrupt , has, upon the petition of , and after hearing thereon, been removed from said trust,

It is *Ordered*, That a meeting of the creditors of said be held at , in , in said district, on the day of , A. D., 18 , at which Mr. , one of the registers of this court, shall preside, for the choice of a new assignee of said estate.

And it is further *Ordered*, That the clerk of this court give notice to said creditors of the time, place, and purpose of said meeting, by letter to each, to be deposited in the mail within days from the date of this order.

Witness the Honorable , judge of the said court, and
{ Seal of the seal thereof, at , in said district, on the
the court. } day of , A. D. 18 .

Clerk of the District, for said district.

Form No. 45.

ORDER FOR BANKRUPT'S EXAMINATION.

In the District Court of the United States,
For the District of ' .

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

At , on the day of , A. D. 18 .

District of , ss :

On the application of , assignee of said bankrupt, [or, creditor of said bankrupt, as the case may be,] it is *Ordered*, That said bankrupt attend before , one of the registers in bankruptcy of this court, at his office, [*Describing the place*] on the day of , at o'clock m., to submit to the examination required by the 26th section of the bankrupt act of March 2, 1867, and that a copy of this order be delivered to him, the said , forthwith.

Witness the Honorable , judge of the said court, and
{ Seal of } the seal thereof, at , in said district, on the
{ the court. } day of , A. D. 18 .

Clerk of District Court, for said district.

[N. B.—Where the wife of the bankrupt is to be examined the like form may be used, adding after the description of the application the words “and for good cause shown to this court, she be required to attend before said court, [or, before , a register in bankruptcy.”]

*Form No. 46.*EXAMINATION OF BANKRUPT OR ANY WITNESS EX-
AMINED RELATIVE TO THE BANKRUPTCY.

In the District Court of the United States,
For the District of .

In the Matter of	}	IN BANKRUPTCY.
Bankrupt .		

At , in said district, on the day of , A. D. 18 .
Before Mr. ,

One of the Registers in Bankruptcy of said Court.

District of , ss :

, of , in the county of , and state of ,
being duly and examined at the time and place above mentioned,
upon h oath says [*Here insert substance of examination of party.*]
_____, Register.

Form No. 47.

DECLARATION TO BE MADE BY BANKRUPT OR HIS WIFE.

In the District Court of the United States,
For the District of .

In the Matter of	}	IN BANKRUPTCY.
Bankrupt .		

At , in said district, on
the day of , A. D. 18 .
District of , ss :

The person declared a bankrupt under a petition for adjudication of bank-
ruptcy, filed on the day of , in the year of our Lord one

thousand eight hundred and _____, do solemnly _____ that I will make true answer to all such questions as may be proposed to me respecting all the property of the said _____, and all dealings and transactions relating thereto, and will make a full and true disclosure of all that has been done with the said property, to the best of my knowledge, information, and belief.

Bankrupt, [Or, _____, *the wife of the said* _____, *Bankrupt.*]
 Subscribed and to, this _____ day of _____, A. D. 18 ____.
 Before me, _____,
Register in Bankruptcy.

Form No. 48.

SUMMONS OF WITNESS AFTER ADJUDICATION.

In the District Court of the United States,
 For the _____ District of _____.

In the Matter of Bankrupt .	}	IN BANKRUPTCY.
--	---	----------------

District of _____, ss :

Whereas, _____, of _____, in the county of _____, and state of _____, has been duly declared and adjudged bankrupt, within the true intent and meaning of the act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and such bankruptcy is in due course of prosecution in the district court of the United States for the _____ district of _____, at _____, in said district,

These are to require you, to whom this summons is directed, personally to be and appear before _____, esquire, one of the registers in bankruptcy of the said court, acting in the matter of the said bankruptcy, on the _____ day of _____, at _____ o'clock m., precisely, at [Here insert place of examination], then and there to be examined in relation to said bankruptcy according to the provisions of said act.

And hereof fail not.

Witness the Honorable _____, judge of the said court, and
 { Seal of } the seal thereof, at _____, in said district, on the _____ day
 { the court. } of _____, A. D. 18 ____.

Clerk of District Court, for said district.

Form No. 49.

RETURN OF THE ABOVE SUMMONS.

In the District Court of the United States,
For the District of .

<p style="text-align: center;">In the Matter of</p> <p style="text-align: right;">Bankrupt .</p>	}	IN BANKRUPTCY.
---	---	----------------

District of , ss :

On this day of , A. D. 18 , before me came
of , in the county of , and state of , and
makes , and says that he, this deponent, did, on , the day
of , one thousand eight hundred and , personally serve ,
of , in the county of , and state of , with a
true copy of the summons hereto annexed, by delivering the same to ;
and he, this deponent, further makes , and says that he is not inter-
ested in the proceedings in bankruptcy named in said summons.

Subscribed and to, this day of , A. D. 18 .
Before me, _____,

Register in Bankruptcy.

[N. B.—In case the witness is to be summoned before adjudication, the form may be altered by substituting for the recital the following words:—
"By virtue of the petition or adjudication in bankruptcy filed in said court by , against , in the district court of the United States for the district of ."

Form No. 50.

(Rule Southern District of New York, 19.)

FORM OF CERTIFICATE UNDER SECTION SIX.

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

District of , ss :

I, , one of the registers of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings, and was stated and agreed to by the counsel for the opposing parties, to wit: Mr. , who appeared for the bankrupt, and Mr. , who appeared for , one of the creditors of said bankrupt [*Add other names if others are inserted,*] and [*Here follows a summary of the evidence upon the point or matter to be submitted to the court, and the question of law arising thereon as agreed to by the counsel.*]

And the said parties requested that the same should be certified to the judge for his opinion thereon.

Dated at , the day of , A. D. 18 .

Register in Bankruptcy.

Form No. 51.

PETITION OF BANKRUPT FOR HIS DISCHARGE.

<p style="text-align: center;">In the Matter of</p> <p style="text-align: center;">Bankrupt .</p>	}	IN BANKRUPTCY.
--	---	----------------

To the Hon. _____, *Judge of the District*
Court of the United States, for the _____ *District of* _____.

A. B., of _____, in the county of _____, and state of _____, in said district, respectfully represents, that on the _____ day of _____, last past, he was duly declared a bankrupt under the act of Congress in that case made and provided; that he hath duly surrendered all his property and rights of property, and fully complied with and obeyed all the orders and directions of the court touching his bankruptcy, and is ready to submit himself to any other and further examinations, orders, and directions which the court may require.

[N. B.—If this petition is filed within less than six months after the filing of the original petition, it should state that no debts have been proved against the bankrupt, or that no assets have come to the hands of the assignee.]

WHEREFORE HE PRAYS that he may be decreed by the court to have a full discharge from all his debts provable under said Bankrupt Act, and a certificate thereof granted according to the said act of Congress.

Dated this _____ day of _____, A. D. 18 ____.

_____, *Bankrupt.*

Order of Court thereon.

District of _____, ss :

On this _____ day of _____, A. D. 18 ____, on reading the foregoing petition, it is *Ordered* by the court, That a hearing be had upon the same on the _____ day of _____, A. D. 18 ____, before said court, at _____, in said district, at _____ o'clock, _____ m.; and that notice thereof be published in _____ newspapers printed in said district for _____ times once a week; and that all creditors who have proved their debts, and other persons in interest, may appear at the said time and place, and show cause, if any they have, why the prayer of the said petition should not be granted.

And it is further ordered by the court, That all such creditors whose places of residence are known shall be entitled to a service of notice of the said petition and order, either personally or by letter addressed to them at their known usual place of residence, attested by the clerk of the court, or served at their usual place of abode by the marshal or his deputy, or sent by mail, whereof due notice shall be given.

Witness the Honorable _____, judge of the said court, and the
 { Seal of } seal thereof, at _____, in said district, on the _____ day
 { the Court. } of _____ A. D. 18 .

Clerk of District Court, for said district.

Form No. 52

NOTICE BY LETTER TO CREDITOR THAT BANKRUPT HAS PETITIONED FOR DISCHARGE.

In the District Court of the United States,
 For the _____ District of _____.

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

At _____, in said district, on
 the _____ day of _____, A. D. 18 .

District of _____, ss :

SIR: Take notice that a petition has been filed in said court by _____, of _____, in said district, duly declared a bankrupt under the act of Congress of March 2, 1867, for a discharge, and certificate thereof, from all his debts, and other claims provable under said act, and that the day of _____ next, at _____ o'clock m., is assigned for the hearing of the same, when and where you may attend and show cause, if any you have, why the prayer of the said petition should not be granted.

Clerk of the District Court.

To _____.

[N. B.—The certificate of the clerk that these letters were duly mailed to each creditor, and that the proper postage stamps were placed thereon,

will be evidence of the fact of notice. If any are delivered to the creditors or left at their usual place of residence, the persons so delivering or leaving them should make affidavit as follows:

Affidavit of service of Notice.

District of _____, ss:

I, *Marshal*, [or, *Deputy Marshal*, as the case may be,] make oath, that I delivered letters of which a copy is hereto annexed to the following named persons, at the times and places stated in connection with the name of each, and that I left at the last and usual place of abode in said district copies of the same letter, with the following named persons, on the day and hour mentioned in connection with the name of each. [*Here insert names and other required particulars.*]

Served personally _____ day of _____, A. D. 18 ____.

[Or, left at last usual place of abode _____ day of _____, A. D. 18 ____.

Marshal, [or *Deputy*.]

This _____ day of _____, A. D. 18 ____, subscribed and _____ to, before me.

One of the Registers in Bankruptcy of said Court.

Form No. 53.

CREDITOR'S SPECIFICATION OF THE GROUNDS OF HIS
OPPOSITION TO THE BANKRUPT'S DISCHARGE.

In the District Court of the United States,
For the _____ District of _____.

In the Matter of

Bankrupt.

IN BANKRUPTCY.

_____, of _____, in the county of _____, and state of _____,
creditor, having proved _____ debt against the estate or
said _____, bankrupt, and having received notice of his petition for

a discharge from his debts, do hereby oppose the granting of said discharge, and for the grounds of such opposition do file the following specification:

[Here insert one or more of the causes which should prevent the granting of the bankrupt's discharge according to the provisions of section twenty-nine of said act.]

To _____, _____, *Creditor, &c.*
 To _____, *District Judge,*
[or, Register in Bankruptcy] of said district.

Form No. 54.

CREDITOR'S PETITION.

To the Honorable _____, Judge of the District Court
 of the United States for the _____ District of _____.

THE PETITION of _____, of the _____, of _____, in the county of _____, and state of _____, respectfully shows:—That he is a creditor of _____, who for a period of _____ months next preceding the date of the filing of this petition, has resided at _____, in the county of _____, and state of _____, and district aforesaid:—That your petitioner's demand is provable against the said _____ in accordance with the provisions of the act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867: That he believes that said _____ owes debts to an amount exceeding the sum of three hundred dollars: That your petitioner's demand exceeds the amount of two hundred and fifty dollars; and that the nature of your petitioner's demand against the said _____ is as follows:

[A certain promissory note signed by said _____, payable to the order of your petitioner, [or, naming the party to whose order the said note is made payable,] of which the following is a copy, to wit: [or, set forth evidence of indebtedness in any other form to a liquidated amount, exceeding two hundred and fifty dollars, to meet the case.]

And your petitioner further represents, that within the six calendar months next preceding the date of this petition, the said _____ did commit an act of bankruptcy within the meaning of said act, to wit: In that the said _____ did heretofore, to wit: on the _____ day of _____, A. D. 18____, depart out of, and from the state of _____, of which he is an inhabitant as aforesaid, with intent to defraud his creditors, [or, being absent during said period, he has, with intent to defraud his creditors, remained absent from said state:]—

[Or,

That the said , within the period aforesaid, to wit: On the day of , A. D. 18 , within said district, did conceal himself, [or, did disguise himself,] to avoid the service of legal process in an action for the recovery of a debt or demand, provable under said act, to wit: To avoid the service of legal process in a suit brought by , in the court, of the state of , [or, any other court] in which such process had been issued, to be served upon the said , by , marshal for said district, [or, sheriff, constable, or other officer, or party, as the case may be,] at which time the said did conceal himself, and remain secreted, to avoid the service of said process, so that the said officer or party having the same to serve upon said debtor was unable to find him, in order to make proper service of the same:—

[Or,

That the said , within the period aforesaid, to wit: At , in said district, on the day of , A. D. 18 , being possessed of certain property, to wit: [*Here describe the property,*] and he, being aware that legal process had been issued, [or, was about to be issued,] to be levied thereon at the suit of some one or more of his creditors, did conceal [or, remove; or, destroy the identity] of said property, to avoid its being attached, taken, or sequestered on such process:—

[Or,

That the said , within the period aforesaid, to wit:—At in said district, on the day of , A. D. 18 , being possessed of certain estate, property, rights or credits, to wit: [*Here describe the property and where situated,*] did make an assignment [or, gift, sale, conveyance, or transfer, as the case may be] of the same, [or, of any part thereof—mentioning the part] to , of , in the county of , and state of , with intent to delay [or, hinder; or, defraud] the creditors of him the said :—

[Or,

That the said , within the period aforesaid, and within said district, to wit: At , has been arrested and held in custody under and by virtue of *mesne* process, [or, execution; or, as the case may be,] issued out of the court of the United States for the district of , [or, of any court of any state, district, or territory,] within which such debtor resides or has property, founded upon a demand in its nature provable against the bankrupt's estate under said act, and for a sum exceeding one hundred dollars; and that such process is remaining in force, and not discharged by payment, or in any other manner provided by the laws of such State applicable thereto, for a period of seven days:—

[Or,

That the said _____, within the period aforesaid, and within said district, to wit:—On the _____ day of _____, A. D. 18 _____, being bankrupt, [or, insolvent; or, in contemplation of bankruptcy, or insolvency,] did make to _____, of _____, in the county of _____, and state of _____, a payment [or, gift, grant, sale, conveyance, or transfer] of money [or, of any other property, estate, rights or credits,] [or, did give to _____, of _____, in the county of _____, and state of _____, a warrant to confess judgment, or, did procure, or suffer his property to be taken on legal process,] in favor of _____, of _____, in the county of _____, and state of _____; the said judgment to be confessed, issuing out of the _____ court of _____; with the intent to give a preference to _____, of _____, in the county of _____, and state of _____; [or, to one or more of his creditors; or, with the intent, thereby, to give preference to _____, of _____, in the county of _____, and state of _____, being a person, [or, persons,] who were liable for him as indorser, bail, sureties, or otherwise, [describing the particular relation,] or, with the intent by such disposition of his property to defeat, or delay the operation of said act.]

[Or,

That the said _____, within the period aforesaid, and within said district, to wit: On the _____ day of _____, A. D. 18 _____, being a banker, [or, merchant; or, trader; or, as the case may be,] has fraudulently stopped, or suspended (and has not resumed) payment of his commercial paper within a period of fourteen days.

[N. B.— *Whichever of the acts is relied upon as the act of bankruptcy of debtor, the same must be particularly described.*]

WHEREFORE YOUR PETITIONER PRAYS that he, the said _____, may be declared a bankrupt, and that a warrant may be issued to take possession of his estate; that the same may be distributed according to law; and that such further proceedings may be had thereon as the law in such case prescribes.

Petitioner.

Solicitor [or, Attorney.]

Oath to Foregoing Petition.

UNITED STATES OF AMERICA,

District of _____, ss:

I, _____, the petitioner above named, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by me are true, so far as the same are stated of my own knowledge, and that those

matters which are stated therein on information and belief, are true according to the best of my knowledge, information, and belief.

_____,
Petitioner.

Subscribed and sworn [*or, affirmed*] to, before me, this day of ,
 A. D. 18 .

_____,
District Judge, [or, Register in Bankruptcy, or, U. S. Commissioner.]

[N. B.—In case the parties proceeded against are a copartnership, or a corporation, the above forms may be varied accordingly.]

Form No. 55.

DEPOSITION AS TO PETITIONING CREDITOR'S CLAIM.

[To be filed with creditor's petition.]

In the District Court of the United States,
 For the District of .

In the Matter of .

Against whom a petition for adjudication
 of bankruptcy was filed on the
 day of , A. D. 18 .

} IN BANKRUPTCY.

At , in said district,
 on the day of , A. D. 18 .
 Before , one of the registers
 of said court, in bankruptcy.

District of , ss :

, of , in the county of , and state of ,
 being duly sworn [*or, affirmed*] and examined, at the time and place above
 mentioned, upon his oath [*or, affirmation*], says that the said
 was, [*or, were*] on and before the day of , A. D. 18 , and

still justly and truly indebted unto this deponent, [*Here give a particular description of the debt.*]

_____, *Petitioning Creditor.*

On the _____ day of _____, before me personally appeared _____, the above-mentioned petitioning creditor, and was duly sworn to the truth of the foregoing statement.

_____, *Register in Bankruptcy.*

Form No. 56.

DEPOSITION OF WITNESS TO ACT OF BANKRUPTCY.

[To be filed with creditor's petition.]

In the District Court of the United States,
For the _____ District of _____.

In the Matter of _____

Against whom a petition for adjudication
of bankruptcy was filed on the
day of _____, A. D. 18 ____.

} IN BANKRUPTCY.

At _____, in said district, on
the _____ day of _____, A. D. 18 ____.
Before _____, one of the registers of
said court in bankruptcy:

District of _____, ss.:

being duly sworn [*or, affirmed,*] and examined, upon his oath, [*or, affirmation,*] says that, [*Here set forth particularly the the witness's knowledge of the act of bankruptcy alleged to have been committed by the party proceeded against.*]

On the _____ day of _____, appeared personally _____, the above-named witness, and was duly sworn to the truth of the foregoing statement.

_____, *Register in Bankruptcy.*

Form No. 57.

ORDER TO SHOW CAUSE, UPON CREDITOR'S PETITION.

In the District Court of the United States,
For the District of .

In the Matter of

Against whom a petition for adjudication of
bankruptcy was filed on the
day of , A. D. 18 .

IN BANKRUPTCY.

District of , ss :

Upon filing proofs sustaining the allegations of the petition aforesaid, it is
Ordered, That the said do appear in this court, as a court of bank-
ruptcy, to be holden at , in the county of , and state
of , and district aforesaid, on the day of , at o'clock,
m., and show cause, if any there be, why the prayer of said petition
should not be granted ; and—

It is further *Ordered*, That a copy of said petition, together with a copy
of this order, be served on said , by delivering the same to him
personally, or by leaving the same at his last usual place of abode, in said
district, at least five days previous to the day herein required for his
appearance.

Witness the Honorable , judge of the said court, and
the seal thereof, at , in said district, on the
{ Seal of } day of , A. D. 18 .
the court. }

Clerk of District Court, for said district.

Form No. 58.

ADJUDICATION OF BANKRUPTCY—CREDITOR'S PETITION.

Rule S. D. N. Y., 2.

In the District Court of the United States,
For the District of .

In the Matter of

} IN BANKRUPTCY.

Bankrupt .

At , in said district, on the
day of , A. D. 18 .

District of , ss.:

This cause came on to be heard at , in said court, and
[*Here state the proceedings, whether there was no opposition, or, if opposition,
what proceedings were had, and when and where, and what counsel appeared
for the several parties.*]

And thereupon, and upon consideration of the proofs in said cause, (*and
the arguments of counsel thereon, if any,*) it was found that the facts set
forth in said petition were true, and it is therefore adjudged that
became bankrupt within the true intent and meaning of the act entitled
"An Act to establish a uniform system of bankruptcy throughout the
United States," approved March 2, 1867, before the filing of the said peti-
tion, and he is therefore declared and adjudged a bankrupt accordingly.
And it is further ordered that the said bankrupt shall, within five days after
the date of the order, make and deliver, or transmit by mail, post-paid, to
the marshal, as messenger, a schedule of his creditors, and inventory of his
estate, in the form, and verified in the manner required of the petitioning
debtor by the said act.

Witness the Honorable , judge of the said court, and
the seal thereof, at , in said district, on the
{ Seal of } day of , A. D. 18 .
the court. }

Clerk of District Court, for said district.

Form No. 59.

Rules S. D. N. Y., 1, 5.

WARRANT OF SEIZURE UPON ADJUDICATION OF
BANKRUPTCY ON CREDITOR'S PETITION.In the District Court of the United States,
For the District of .

In the Matter ofBankrupt .

} IN BANKRUPTCY.

District of , ss :

To the Marshal of said District, [or, to either of his Deputies,] Greeting :

WHEREAS a petition for adjudication of bankruptcy was, on the day of , A. D. 18 , filed against , of the county of , and state of , in said district, under which he has been duly declared and adjudicated bankrupt; you are therefore, by virtue of the said petition and the adjudication thereon, according to the provisions of the act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, required, authorized, and empowered, as messenger, to take possession of all the estate, real and personal, of said , the said bankrupt, except such as may be by law exempt from the operation of said act, and of all his deeds, books of account, and papers, and to keep the same safely until the appointment of an assignee.

And you are also directed to publish notice twice in the newspapers called and , printed at , in the county of , the first publication to be made forthwith as follows :

In the District Court of the United States,
For the District of .

In the Matter ofBankrupt .

} IN BANKRUPTCY.

A warrant in bankruptcy has been issued by said court against the estate of , of the county of , of the state of , in said

district, adjudged a bankrupt upon the petition of his creditors, and the payment of any debts and the delivery of any property belonging to said bankrupt, to him or to his use, and the transfer of any property by him, are forbidden by law. A meeting of the creditors of said bankrupt to prove their debts and choose one or more assignees of his estate will be held at a court of bankruptcy to be holden at _____, in said district, on the _____ day of _____ A. D. 18 _____, at o'clock _____ M., at the office of _____, [giving the street and number,] one of the registers in bankruptcy of said court.

Marshal, [or, Deputy Marshal,] Messenger.

And you will also serve written or printed notice by mail or personally on all creditors whose names may be given to you by said bankrupt within five days from the date of such adjudication, within _____ days after the date hereof, and also to said _____, the bankrupt, which notice shall be as follows.

In the District Court of the United States,
For the _____ District of _____.

In the Matter of _____

Bankrupt .

} IN BANKRUPTCY.

To _____ District of _____, ss :
_____ , one of the creditors of said _____, bankrupt.

This is to give you notice:

1st. That a warrant in bankruptcy has been issued against the estate of _____, bankrupt aforesaid.

2d. That the payment of any debts, and the delivery of any property belonging to said bankrupt, to him or to his use, and the transfer of any property by him, are forbidden by law.

3d. That a meeting of the creditors of the debtor to prove their debts and choose one or more assignees of the estate will be held at a court of bankruptcy to be holden at _____, in said district, on the _____ day of _____, at _____ o'clock _____ m., at the office of _____, [giving the street and number,] one of the registers in bankruptcy of said court.

And the following are the names of the creditors of said bankrupt and the amount of their debts as given to me by him.

[*E. g.*—A. B., (of Boston), _____ dollars.] _____, Messenger.

And have you there this warrant, with your doings thereon.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of this court to be affixed at _____, this _____ day of _____, in the year of our Lord 18 _____.

[L. S.]

Clerk of the Court.

_____,
District Judge.

Return by Marshal thereon.

District of _____, ss:

By virtue of the within warrant, I have taken possession of the estate of the within named _____, bankrupt, except such as is by law excepted from the operation of said warrant by the act of Congress, and of all his deeds, books of account, and papers which have come to my knowledge, and I have published notice by advertisement on two different days in the newspapers within mentioned, the first publication of which was on the day of _____, A. D. 18 ____ . I also within _____ days after the date of the within warrant sent written or printed notice, as within directed, to the within named _____, bankrupt, and to the creditors named on the schedule delivered to me by him, and herewith returned. The notices sent by mail were deposited in the post-office at _____, on the _____ day of _____, A. D. 18 ____, with the proper postage stamp affixed thereto, and those delivered personally by me to said creditors were delivered at the times and the places set opposite to the name of each, and all of said notices were according to the directions set out in this warrant.

_____,
Marshal, [or, Deputy Marshal,] Messenger.

FEES AND EXPENSES.

1. Service of warrant.....	\$2	00
2. Necessary travel at the rate of 5 cents a mile each way..		
3. Notice to creditors, 10 cents each.....		
4. Actual expenses in publishing notices as follows.....		
5. Actual expenses in custody of property and other services as follows.....		

[Here render the particulars.]

_____,
Marshal, [or, Deputy Marshal,] Messenger.*Affidavit as to Expenses.*

District of _____ A. D. 18 ____ .

Personally appeared the said _____, messenger, and made oath that the above expenses returned by him under numbers four and five have been actually incurred and paid by him, and are just and reasonable.

_____,
One of the Registers in Bankruptcy in said district.

Form No. 60.

ADJUDICATION WHERE DEBTOR IS FOUND NOT BANKRUPT.

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

At , in said district,
on day of , A. D. 18 .
Before Honorable , judge of the district of .
District of , ss :

This cause came on to be heard at , in said court, and [*Here state the proceedings, whether there was no opposition, or, if opposed, state what proceedings were had, and when and where, and what counsel appeared for the several parties.*]

And thereupon, and upon consideration of the proofs in said cause, (*and the arguments of counsel thereon, if any,*) it was FOUND that the facts set forth in said petition were not proved; and it is therefore *Ordered*, That said petition be dismissed, and that all proceedings under the same be vacated and annulled.

Witness the Honorable , judge of the said court, and
{ Seal of } the seal thereof, at , in said district, on the
the court. } day of , A. D. 18 .

Clerk of District Court, for said district.

[N. B. 1.—If default be made by the debtor to appear pursuant to the order upon a creditor's petition, the subsequent order may be made by a register in bankruptcy.]

[N. B. 2.—If no schedule of creditors shall be delivered to the messenger by the bankrupt, the messenger shall prepare such schedule from the best information he can obtain, and send notices accordingly.]

Form No. 61.

DENIAL OF BANKRUPTCY, AND DEMAND FOR JURY BY
DEBTOR.

In the District Court of the United States,
For the District of

In the Matter of the Petition of	}	IN BANKRUPTCY.
, Creditor,		
<i>vs.</i>		
, Debtor.		

At _____, in said district,
on the _____ day of _____ A. D. 18 ____.

District of _____, ss :

And now on this return day [or, adjourned return day] for the hearing of said petition, the said appears and denies that he has committed the act of bankruptcy set forth in said petition, and avers that he should not be declared bankrupt for any cause in said petition alleged, and this he prays may be inquired of by the court, [or, he demands that the same may be inquired of by a jury.]

Witness the Honorable _____, judge of the said court, and
 { Seal of } the seal thereof, at _____, in said district, on the
 { the court. } day of _____, A. D. 18 ____.

Clerk of District Court, for said district.

Form No. 62.

ORDER OF COURT UPON DENIAL OF BANKRUPTCY AND
DEMAND FOR JURY TRIAL.

(*Involuntary Bankruptcy.*)

In the District Court of the United States,
For the District of

In the Matter of the Petition of
 , Creditor,

vs.

Debtor.

IN BANKRUPTCY.

At _____, in the said district,
on the _____ day of _____, 18 ____.

District of _____, ss:

Upon the demand in writing filed by the respondent to said petition, that the fact of the commission of an act of bankruptcy may be inquired of by a jury, it is *Ordered*, That said issue be submitted to a jury at the present term of this court, (if a jury be in attendance,) *or*, if in vacation, at the next term of this court.

Witness the Honorable _____, judge of the said court, and
 { Seal of } the seal thereof, at _____, in said district, on the
 { the court. } day of _____, A. D. 18 ____.

Clerk of District Court for said district.

Form No. 63.

APPOINTMENT OF TRUSTEES UNDER SECTION 43.

In the District Court of the United States,
For the District of .

In the Matter of	}	IN BANKRUPTCY.
Bankrupt .		

At this meeting of the creditors of said bankrupt, called specially by order of said court, for the purpose of determining in what manner the estate of said bankrupt shall be settled, it was resolved by three-fourths in value of the creditors whose claims have been proved, as follows:

1st. That it is for the interest of the general body of the creditors of said that the estate of said , bankrupt, should be wound up and settled, and distribution made among the creditors by trustees under the inspection and direction of a committee of creditors.

2d. That this resolution be certified and reported to the court.

3d. That be nominated as trustee to take, hold and distribute said estate.

4th. That , of , of , be the committee of the creditors under whose direction the said trustees shall act.

Creditors.	Amount of Debts.	
	Dolla.	Cts.

Affidavit of Bankrupt.

A. B., the said bankrupt, being duly sworn, [or, affirmed] says that the names of the persons affixed to the foregoing resolution represent three-

fourths in value of all his creditors whose claims have been proven against his estate.

Subscribed and to, before me, this day of , A. D. 18 .

Register, [or, U. S. Commissioner.]

Certificate of Register thereon.

In the District Court of the United States,
For the District of .

(In Bankruptcy.)

At , the day of , A. D. 18 , I hereby certify that at a meeting of the creditors of said , held this day in pursuance of a notice regularly given according to the provisions of the act of Congress entitled, &c., approved March 2, 1867, [or, *according to the order of the court*, as the case may be,] the above resolutions were adopted and signed by three fourths in value of the creditors of said bankrupt, who were present or represented at said meeting.

Register in Bankruptcy.

Order of the Court on above Proceedings.

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

IN BANKRUPTCY.

The foregoing certificate having been filed and read, it is *Ordered*, That the said shall convey, transfer, and deliver all his property or estate to , as trustee by deed, in the following form:

District of , ss:

In the district court of the United States for said district.

This indenture made this day of , A. D. 18 , between , (the debtor,) of , in the county of , and state of , and , on behalf and with the consent of , creditors of the said , WITNESSETH, that the said , (the debtor,) hereby conveys, transfers, and delivers all his estate and effects to , absolutely, to have and to hold the same in the same manner and with the same rights in all respects as the said would have had or held the same if no pro-

ceedings in bankruptcy had been taken against him, to be applied and administered for the benefit of the creditors of said _____, in like manner as if said _____ had been at the date hereof duly adjudged bankrupt, and the said (*trustees*) had been appointed assignee in bankruptcy under said act.

In testimony whereof, the said _____, (*debtor*), and the said _____, (*trustees*), in acceptance of said trust, have hereunto set their hands and seals, this _____ day of _____, A. D. 18 ____.

Executed in presence of—

_____, [L. S.]

_____, [L. S.]

_____, [L. S.]

This day appeared before me, a register in bankruptcy, the above-named _____, (*bankrupt*), and acknowledged the foregoing instrument by him signed to be his free act and deed.

_____,
Register in Bankruptcy.

We hereby give our assent to the execution of the above deed:

Names of Creditors.	Residence.	Amount.	
		Dolls.	Cts.

Oath of Bankrupt.

In the District Court of the United States,
For the _____ District of _____.

In the Matter of _____ Bankrupt .	}	IN BANKRUPTCY.

_____, the said bankrupt, being duly sworn, doth depose and say that he has conveyed, transferred and delivered all his property to the trustees in the above indenture named, and that the

persons signing their consent to the above conveyance represent three-fourths in value of all his creditors whose claims have been proved against his estate.

_____,
Bankrupt.

Subscribed and sworn [or, affirmed] this day of , A. D. 18 .
Before me, _____,
Register in Bankruptcy.

Witness the Honorable , judge of the said court, and the
{ Seal of } seal thereof, at , in said district, on the day
{ the court. } of , A. D. 18 .
_____,
Clerk of District Court, for said district.

Advertisement of Trustee.

In the District Court of the United States,
For the District of .
(In bankruptcy.)

This is to give notice, that by an indenture bearing date the day
of , A. D. 18 , of , has
conveyed and assigned all his estate and effects whatsoever to ,
as trustee, upon trust for the benefit of all the creditors of ,
and that said conveyance was duly executed according to the provisions of
the 43d section of the bankrupt act of March 2, 1867.

Dated this day of , A. D. 18 .

_____,
_____,
_____,
Trustees.

Order of Court.

The foregoing proceedings under the 43d section of the bankrupt act of
March 2, 1867, having been placed on file and read, it is

Ordered, That all proceedings upon said petition in bankruptcy be stayed
until the further order of the court.

Witness the Honorable , judge of the said court, and the
{ Seal of } seal thereof, at , in said district, on the day
{ the court. } of , A. D. 18 .

Form No. 64.

ORDER CONCERNING SALE OF PROPERTY BY ASSIGNEE.

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

} IN BANKRUPTCY.

At , in said district, on the day of , A. D. 18 .
District of , ss :

Upon the representation of , a creditor of said , and upon the proofs filed therewith, it is *Ordered*, That the real estate of said bankrupt, when offered for sale by his assignee, shall be sold in lots or parcels as follows, [*Here follows the direction by reference to plat or any other specific description or order in which the property shall be sold.*]

Witness the Honorable , judge of the said court, and
{ Seal of } the seal thereof, at , in said district, on the day
{ the court. } of , A. D. 18 .

Clerk of District Court, for said district.

Form No. 65.

ORDER CONCERNING SALE OF PROPERTY OF CORPORATION.

In the District Court of the United States,
For the District of .

In the Matter of the bankruptcy of

A Corporation formed under the laws of
the State of .

} IN BANKRUPTCY.

At , in said district, on the day of , A. D. 18 .
District of , ss :
Upon the representation of , a creditor, [or, the party

interest,] and upon the proofs filed therewith, it is *Ordered*, That the franchise of said corporation be sold in fractional parts according to the number of shares therein, as follows, [*If there be one thousand shares of the corporation, the order may require that the franchise be sold in fractions of* , *or in any other proportion.*]

Witness the Honorable _____, judge of said court, and
 { Seal of } the seal thereof, at _____, in said district, on the _____ day
 { the court. } of _____, A. D. 18 .

Clerk of District Court, for said district.

Form No. 66.

ORDER OF DIMINUTION OF CLAIM.

In the District Court of the United States,
 For the _____ District of _____.

<p style="text-align: center;">In the Matter of</p> <p style="text-align: center;">Bankrupt .</p>	}	IN BANKRUPTCY.
--	---	----------------

At _____, in said district, on
 the _____ day of _____, A. D. 18 .

District of _____, ss:

Upon the evidence submitted to this court upon the claim of _____, against said estate, (*and, if the fact be so, upon hearing counsel thereon,*) it is *Ordered*, That the amount of said claim be reduced from the sum of _____, as set forth in the affidavit in proof of claim filed by said creditor, in said case, to the sum of _____, and that the latter-named sum be entered upon the books of the assignee as the true sum upon which a dividend shall be computed, [if with interest, insert, "with interest thereon from the _____ day of _____, A. D. 18 ."]

Witness the Honorable _____, judge of the said United States District Court.

Clerk of District Court, for said district.

Form No. 67.

EXPUNGING OR ALLOWANCE OF CLAIM.

In the District Court of the United States,
For the District of .

In the Matter of

Bankrupt .

IN BANKRUPTCY.

At _____, in said district,
on the _____ day of _____, A. D. 18 ____.

District of _____, ss:

Upon the evidence submitted to the court upon the claim of
against said estate, (and, if the fact be so, upon hearing counsel thereon,) it
is *Ordered*, That said claim be disallowed and expunged from the list of
claims upon the assignee's record in said case.

Witness the Honorable _____, judge of said United States District Court.

Clerk of District Court, for said district.

[N. B.—If the claim is found to be good, say, "*It is Ordered, That said claim be established to the full amount thereof.*"]

RULES IN EQUITY.

The Rules governing Proceedings in Equity and Appeals—forming a part of this practice—are published so conveniently that it is deemed unnecessary to insert them here.

The Rules at Common Law of the Second Circuit are inserted hereafter—not only because of their applicability to Bankruptcy Practice in this District, but because of the difficulty of obtaining them in convenient form.

.

RULES IN BANKRUPTCY.

SOUTHERN DISTRICT OF NEW YORK.

At a stated term of the district court of the United States of America for the southern district of New York, held at the city of New York, in and for said district, on the 22d day of June, in the year of our Lord, one thousand eight hundred and sixty-seven.

Present—The Honorable SAMUEL BLATCHFORD, *District Judge*.

Ordered, That the following Rules, Orders, and Regulations be prescribed as rules governing proceedings in bankruptcy in the district court of the United States for the southern district of New York, under the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, in addition to and with reference to the "General Orders in Bankruptcy," and the Forms specified in the schedules thereto annexed, framed by the justices of the supreme court of the United States, in pursuance of the tenth section of said act, and adopted by said court and promulgated May 16th, 1867.

Extract from the Minutes,

GEORGE F. BETTS, *Clerk*.

Rule 1.

In voluntary bankruptcy, where the petition states that the debtor, whether an individual, a copartnership, a corporation, or a joint-stock company, has resided or carried on business for the six months next immediately preceding the time of filing the petition, or for the longest period during such six months, in the city and county of New York, the petitions shall be referred, in rotation, by Form No. 4, to the several registers appointed in the six Congressional districts therein, commencing with the fourth and ending with the ninth, in the order of the times of filing such petitions; and where in any other county, the petition shall be referred, by Form No. 4, to the register appointed in the Congressional district in which such county is embraced. A petition may be otherwise referred for special reasons, or in

cases not herein provided for. In involuntary bankruptcy, the register will be designated with reference to the special circumstances of each case.

The order, Form No 4, designating the register to act upon the petition, in voluntary bankruptcy, shall, in the case of a register in any district in the city and county of New York, specify as the place where the register shall act upon the matters arising under the case, and the warrant, Form No. 59, in involuntary bankruptcy, shall, in a like case, specify as the place where the meeting of the creditors will be held, the office of the register as designated by him, by a writing filed with the clerk. In the case of a register in any district other than one in the city and county of New York, the order, Form No. 4, in voluntary bankruptcy, shall specify as the place where the register shall act upon the matters arising under the case, an office of the register as designated by him in like manner, in the county in which is the place of residence of the petitioner, or the place of business of the copartnership corporation, or joint-stock company, as set forth in the petition, having due regard always to the proximity and convenience of such office to such place of residence or place of business; and, in a like case, in the warrant, Form No. 59, in involuntary bankruptcy, the place will be designated with reference to the special circumstances of the case.

The day named in the order, Form No. 4, for the attendance of the bankrupt before the register, in voluntary bankruptcy, and the day named in the warrant, Form No. 59, for the meeting of creditors, in involuntary bankruptcy, will be fixed with reference to the convenient and speedy progress of the case.

Every register in a district other than the city and county of New York, shall, by a writing filed with the clerk, designate the days on which he will attend at a place or places within each county in his district.

Every register may, in any case referred to him, fix the times when he will act upon the several matters arising under such case, other than the attendance of the bankrupt, as fixed by the order, Form No. 4, and the meeting of creditors as fixed by the warrant, Form No. 59; but the Register shall not, without leave of the court, be at liberty to change the place specified in the order, Form No. 4, or to act upon the matters arising under a case in involuntary bankruptcy at any other place than the one specified in the warrant, Form No. 59, as the place for the meeting of creditors.

Rule 2.

The adjudication of bankruptcy, Form No. 58, shall contain a provision that the case be referred to one of the registers, naming him, to take such proceedings thereon as are required by the act.

Rule 3.

Whenever a petition is referred to a register in a voluntary case, and whenever, in an involuntary case, an order is made, on an adjudication of bankruptcy, referring the case to a register, the clerk, at the time he sends

or delivers to the register a copy of the order of reference, shall pay to him the sum of twenty-five dollars out of the fifty dollars deposited with the clerk under section 47 of the act, the same to be applied to the payment of such fees of the register as are chargeable to the petitioner making the deposit. Whenever, by a return made to the court, by the register, of the fees so chargeable for services rendered by him, it shall appear that the aggregate amount of such fees exceeds the aggregate payments made thereon to the register out of the fifty dollars, the clerk shall, if requested by the register, make further payments to him thereon to the amount of such fees, until the fifty dollars shall all of it be paid out, and thereafter the fees of the register which are chargeable to such petitioner shall be paid or secured in like manner with the other fees provided for by Rule 29 of the "General Orders in Bankruptcy."

The foregoing provisions of this Rule shall not apply to a case of voluntary bankruptcy, where, under Rule 30 of the "General Orders in Bankruptcy," the judge shall direct that the fees and costs in the case shall not exceed the sum required by the act to be deposited with the clerk; but, in every such case, such of the disbursements paid out by the register and marshal for the purposes specified in Rule 12 of the "General Orders in Bankruptcy," and returned by them under oath, under said Rule 12, as are chargeable to the petitioning debtor, shall be refunded to them severally by the clerk out of such sum; and the clerk, marshal, and register shall perform the duties required of them by such petitioning debtor without first requiring payment or security for their fees, subject to the application by the court to such fees, of so much of such sum as shall remain after refunding such disbursements.

Rule 4.

The register shall, under Rule 7 of the "General Orders in Bankruptcy," examine the duplicate copy of the petition and schedules specified in Form No. 4, and such duplicate copy shall either be a copy of such filed original, certified by the clerk under the seal of the court, or else a duplicate original, signed and verified in like manner with the original petition and schedules filed with the clerk, and shown by evidence satisfactory to the register to be such duplicate original; and the certificate of the register, required by said Rule 7, as to the correctness in form of the petition and schedules, shall be made in writing, and be signed by him, on the duplicate copy which he so examines; and he shall not issue any warrant under Form No. 6, until he shall have so made a certificate, after such examination, that the petition and schedules are correct in form. No such certificate shall be made unless the whole eleven of the sheets composing schedules A and B, in Form No. 1, form part of the schedules to the petition.

Rule 5.

The warrant issued under section 11 or section 42 of the act, according to Form No. 6 or Form No 59, shall specify two, if there be two, and, if not, then one, of the newspapers named in Rule 21, published in the county stated in the petition as the one in which the debtor, whether an individual, a copartnership, a corporation, or a joint-stock company, has resided or carried on business for the six months next immediately preceding the time of filing the petition, or for the longest period during such six months the selection of such newspapers to be made by the register to whom the petition or case is referred. The notices to be published in pursuance of the warrant shall be published twice in each newspaper selected.

The warrant shall designate the creditors on whom personal service is to be made, and notice shall be served by mail upon all creditors other than those so designated. No creditor resident out of this district shall be designated for personal service.

Whenever a debtor shall furnish, at his own expense, to the marshal, printed copies of the notices required to be served by the warrant, no fee shall be allowed to the marshal for copying into the notices the names and places of residences of the creditors and the amounts of their debts.

The warrant, Form No. 6, shall be regarded as process under Rule 2 of the "General Orders in Bankruptcy," and such warrant shall, before it is issued to the marshal, in addition to being signed by the clerk and sealed with the seal of the court, be signed by the judge or the register at the foot thereof, in the following form, with the date: "Issued by me, _____, 18____, _____, District Judge, [or Register in Bankruptcy.]"

Whenever the order Form No. 10 is used by a register, the conclusion of said Form may be varied so that the order may be attested or signed by the register alone.

Rule 6.

All proofs of debt which shall be made and verified prior to the election or appointment of an assignee, shall be delivered or sent to the register to whom the case is referred. If the register entertains doubts of the validity of any claim, or of the right of a creditor to prove it, and is of opinion that such validity or right ought to be investigated by the assignee, he may postpone the proof of the claim until the assignee is chosen.

Rule 7.

In case no choice of an assignee is made by the creditors at their first meeting, or in case an assignee, chosen by the creditors, fails within five

days to express in writing his acceptance of the trust, or in case of a vacancy in the office of an assignee, caused by his removal, resignation, death, or other cause, John Sedgwick, Esquire, of the city of New York, counselor at law, will be appointed assignee where the judge is required by the act to appoint the assignee, and where the said John Sedgwick is appointed by the register, such appointment is hereby approved by the judge. In special cases, vacancies in the office of assignee will be filled by an election by the creditors, or by the appointment of an assignee other than the one named.

Rule 8.

Under Rule 9 of the "General Orders in Bankruptcy," an assignee shall notify the register of his acceptance or rejection of the trust, and the register shall immediately, on receiving such notice, report it to the clerk of the court.

Rule 9.

Every assignee shall, immediately on receiving an assignment of an estate in bankruptcy, send or deliver such assignment to the clerk of the court, who shall make a true copy of it, and certify such copy under his hand and seal of the court, and such certified copy shall then be placed and kept by him on file, and the original assignment shall be returned to the assignee.

Rule 10.

Notice of the appointment of an assignee shall be given by publication once a week for three successive weeks in two of the newspapers named in Rule 21, at least one of which shall be a newspaper published in the city and county of New York, such newspapers to be selected by the register with due regard to the requirements of section 14 of the act.

Rule 11.

Notices of sale by an assignee under Rule 21 of the "General Orders in Bankruptcy," shall be advertised in two, if there be two, and if not, then in one, of the newspapers named in Rule 21, published in the county where the sale is to take place, the selection of such newspapers to be made by the register.

Rule 12.

The notice to creditors of dividends or meetings, required by the 17th, 27th, and 28th sections of the act, shall be such as is provided for by the order contained in Form No. 28, and the register shall select one newspaper, in which the notice shall be published, from among the newspapers specified in Rule 21.

Rule 13.

The list of debts provided for by section 23 of the act, shall be made and certified by the register to whom the petition or case is referred, and he shall place thereon all debts which are duly proved.

Rule 14.

The assignee shall, under section 27 of the act, produce and file vouchers for all payments made by him, except as to items in regard to which the court shall, for reasonable cause, dispense with vouchers.

Rule 15.

The notice by the assignee, under section 28 of the act, of the filing of his account, and of his application for a settlement and discharge, shall be given by him by sending written or printed notices by mail, prepaid, of such filing, and of the time of such application, to all known creditors of the bankrupt.

Rule 16.

All questions for trial or hearing, under sections 31 and 34 of the act, shall be tried or heard at a stated session of the court, on four days' notice of trial or hearing, to be served by either party upon the other party, and upon the clerk, and a calendar of the same shall be made.

Rule 17.

The application, under section 34 of the act, to set aside and annul a discharge, shall be verified by the oath or affirmation of the applicant, and the answer of the bankrupt to the application shall answer specifically the allegations of the application, and shall be verified in like manner.

Rule 18.

The demand in writing for a trial by jury, under section 41 of the act, shall be signed by the debtor or his attorney.

Rule 19.

All issues, questions, points, and matters stated in writing, under Rule 11 of the "General Orders in Bankruptcy," or under the 4th section or the 6th section of the act, or according to Form No. 50, and adjourned into

court for decision, or stated in a special case for the opinion of the court, shall be certified to the judge by the register by a certificate, which shall also state briefly the opinion of the register on the issue, question, point, or matter, and shall be delivered or sent to the clerk; and no oral or written argument shall be allowed on any such issue or question, unless by special leave of the court.

Rule 20.

In pursuance of Rule 28 of the "General Orders in Bankruptcy," the following national banks in this district are designated as those in which all moneys received by assignees or paid into court in the course of any proceedings in bankruptcy shall be deposited, namely:

In the city and county of New York—

Bank of New York, National Banking Association.

In Westchester county—

Westchester County National Bank, at Peekskill; and First National Bank, at Sing Sing.

In Putnam county—

Putnam County National Bank, at Carmel.

In Rockland county—

Rockland County National Bank, at Nyack.

In Orange county—

Highland National Bank, at Newburgh; Goshen National Bank, at Goshen; and Walkill National Bank, at Middletown.

In Sullivan county—

National Union Bank, at Monticello.

In Dutchess county—

Farmers' and Manufacturers' National Bank, at Poughkeepsie.

In Columbia county—

Farmers' National Bank, at Hudson.

In Ulster county—

National Ulster County Bank, at Kingston.

In Greene county—

Tanners' National Bank, at Catskill.

All moneys received by the clerk of the court on account of any bankrupt estate, or paid into court in the course of any proceedings in bank-

ruptcy (except the sums deposited with the clerk under section 47 of the act), shall be deposited in said bank in the city and county of New York; and all sums received by an assignee on account of any estate of which he is assignee, shall be deposited in such one of said banks as he shall select by a writing to be signed by him and filed with the clerk. The check, or warrant, for drawing moneys deposited by the clerk, shall be signed by the clerk and countersigned by the judge. The check, or warrant for drawing moneys deposited by an assignee, shall be signed by him and countersigned by the register designated to act in the case of the estate on account of which such moneys were deposited.

Rule 21.

The following newspapers are designated as those in which all publications required by the Act, or the "General Orders in Bankruptcy," or these Rules, may be made, namely:

In the city and county of New York—

New York Times, and Commercial Advertiser.

In Westchester county—

Statesman, at Yonkers; and Republican, at Sing Sing.

In Putnam county—

Putnam Free Press, at Carmel; and Cold Spring Recorder, at Cold Spring.

In Rockland county—

Rockland County Journal, at Nyack; and Rockland County Messenger, at Haverstraw.

In Orange county—

Daily Journal, at Newburgh; Goshen Democrat, at Goshen; Middletown Press, at Middletown; and Tri-States' Union, at Port Jervis.

In Sullivan county—

Monticello Republican, at Monticello.

In Dutchess county—

Poughkeepsie Eagle, at Poughkeepsie; and Poughkeepsie Telegraph, at Poughkeepsie.

In Columbia county—

Columbia Republican, at Hudson; and Hudson Gazette, at Hudson.

In Ulster county—

Kingston Journal, at Kingston; and Kingston Argus, at Kingston.

In Greene county—

Examiner, at Catskill; and Windham Journal, at Windham.

The marshal and the clerk, and every register or assignee, when required to publish any notice or advertisement, shall preserve and return to the court a copy, cut from each newspaper in which it is published, of each notice and advertisement as published, with a certificate as to the particulars of the publishing, showing that the required publication has been made.

Rule 22.

In case of the absence of the judge at the time and place noticed or appointed for any hearing or proceeding before him in bankruptcy, or if the matter then fails to be called or acted on, the same shall be deemed continued, without other order to the next sitting of the court thereafter, at which time the like proceedings may be had thereupon as if first noticed or appointed for such day.

Rule 23.

If the marshal shall, under Rule 13 of the "General Orders in Bankruptcy," appoint special deputies to act as messengers, he shall, as far as possible, designate one or more of such special deputies to be attached to the office of each register, for the purpose of causing the notices to be published and served which are specified in the warrants issued in the cases referred to such register.

Rule 24.

All notices served or sent by mail by the marshal, the clerk, or an assignee, shall be so written or printed and folded that the direction, postage stamp and post mark shall be upon the notice itself, and not upon an envelope or other separate piece of paper.

Rule 25.

Special cases not comprehended within the foregoing Rules, or the "General Orders in Bankruptcy," or the Forms, shall be submitted to the judge.

AMENDMENTS TO RULES.

At a stated term of the district court of the United States of America for the southern district of New York, held at the city of New York, in and for said district, on the first day of July, in the year of our Lord, one thousand eight hundred and sixty-seven.

Present—The Hon. SAMUEL BLATCHFORD, *District Judge*.

Ordered, That Rule 3 of the Rules, Orders, and Regulations in Bankruptcy prescribed by this court, June 22, 1867, be amended by striking out the word "fifteen" and inserting the word "twenty-five," and by striking out the words "under oath," where they first occur in said Rule.

Ordered, That Rule 5 of said Rules, Orders, and Regulations be amended by striking out the words "by the petitioner or his attorney, or in default thereof;" and also by striking out the words "but in the city and county of New York, one of them shall be a morning paper and one an evening paper."

Ordered, That Rule 7, of said Rules, Orders, and Regulations be amended by striking out the words "also where the assignee is appointed by the register subject to the approval of the judge," and inserting instead the following: "where the said John Sedgwick shall be appointed by any register, such appointment is hereby approved by the judge;" and also by striking out the last sentence and inserting instead the following: "In special cases, vacancies in the office of assignee will be filled by an election by the creditors, or by the appointment of an assignee other than the one above named."

Ordered, That Rule 10 of said Rules, Orders, and Regulations be amended by striking out the word "assignee" where it last occurs, and inserting instead the word "register."

Ordered, That Rule 11 of said Rules, Orders, and Regulations be amended by striking out the words "assignee; but in the city and county of New York, one of them shall be a morning paper, and one an evening paper," and inserting instead the word "register."

Ordered, That Rule 12 of said Rules, Orders, and Regulations be amended by striking out the word "assignee," and inserting instead the word "register."

Ordered, That Rule 21 of said Rules, Orders, and Regulations be amended by striking out the words "*Port Chester Monitor* at Port Chester," and inserting instead the words "*Republican* at Sing Sing."

Extract from the Minutes,

GEORGE F. BETTS, *Clerk*.

R U L E S
OF THE
CIRCUIT COURT OF THE UNITED STATES
FOR THE
SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND
CIRCUIT.

COMMON LAW RULES.

(See General Orders, 32.)

Rule 1.—Form of Real Actions.

Suits relating to the title or possession of land (including all *real actions*), are to be the same in form, in this court, and to be conducted by like processes, as are now used in the supreme court of the State of New York.

Rule 2.—Commencement of Suits.

Other actions at law shall be commenced by *capias ad respondendum*, or summons, in which shall be expressed the true cause of action; except that bills of privilege may be filed, according to the usual course of the court, at the election of the plaintiff.

Rule 3.—Writs—Signature, Test, and Time.

Writs and process must be signed and sealed by the clerk, and have the name of the attorney at whose instance they issue indorsed upon them.

Usually, they are to bear test the day they are issued, and may be returnable the same day, or any day thereafter (Sunday excepted), in term, or vacation; but *alias* and *pluries* writs may be tested on the return day of the next preceding process; and writs of execution, attachment for contempt of

court, or non-payment of costs, writs of error, mandamus, or inhibition, and writs of recognizance of bail in civil causes, must be returnable in term.

When bail is to be charged, the *capias ad satisfaciendum* shall be placed in the marshal's office, at least six days before the return day thereof.

Rule 4.—Bail; When, and Amount.

The defendant may be held to bail, of course, in actions of debt, covenant and assumpsit, where the suit is on an obligation or agreement to pay money, and the writ expresses the cause of action and the true amount due; bail may be taken to double the amount stated in the writ, provided, however, that the addition to such amount shall not in any case exceed one thousand dollars.

In all other cases (except when regulated by statute), bail shall not be exacted without an order of a judge indorsed upon the writ.

Rule 5.—Excessive Bail, Penalty.

If the writ is issued for a sum greater than is justly due, the plaintiff shall pay all costs incurred in proceedings to obtain a mitigation of bail.

Rule 6.—Rules against the Marshal.

Rules, that the marshal return process, or bring in the body, shall be rules of ten days, "or that he show cause, at the expiration of that time, before one of the judges at chambers, why an attachment should not issue against him;" and in default of sufficient cause shown, an attachment may be ordered, and such attachment may be proceeded upon, before either of the judges, and the marshal be committed or discharged upon his order; all the proceedings shall be filed, and a rule of court be entered upon the final order of the judge in conformity thereto.

Rule 7.—When Bail to be put in.

In bailable suits, the defendant shall appear, and put in bail to the action and give due notice thereof, within ten days after the return day of the process served upon him, or, if the suit was removed to this court from a State court, within ten days after filing a copy of the process in this court.

Rule 8.—Exception to Bail.

The plaintiff shall except to bail and give notice thereof, within four days after notice that the same has been put in, and, in default thereof, such bail shall be deemed perfected.

Rule 9.—Justification of Bail.

Within four days after notice of exception, the bail shall justify, or new bail be put in and perfected; and if bail justify at any time subsequently such subsequent justification shall not affect any proceedings on the bail bond, or against the officer, which may have been instituted, unless upon the special order of a judge, and on such terms as he shall impose.

Rule 10.—Before whom.

Bail may justify before the clerk, or one of the commissioners to take affidavits, &c., appointed by this court, with a right of appeal to one of the judges at chambers, and thence to the court.

Rule 11.—Waiver of Bail

The service of a declaration before bail shall be put in, or the acceptance of a plea before the time of exception to bail shall have expired, shall not be construed to be a waiver of bail, or of justification.

Rule 12.—Assignment of Bail Bond.

If bail to the officer becomes special bail, and the plaintiff except thereto, he may nevertheless take an assignment of the bail bond, if bail to the action is not duly perfected.

Rule 13.—Terms for Staying Proceedings.

The following shall be terms on which proceedings in the suit on the bail bond shall be stayed, or the attachment against the officer set aside.

1st. Putting in and perfecting bail above, and paying the costs of the suit on the bail bond, or of the attachment and proceedings thereon and of the motion, unless a full compliance with these terms shall have been previously offered.

2d. Consenting to place the cause in the same condition of progress as if bail had been duly put in and perfected. And if by the default in putting in bail, a trial shall have been lost, then the suit on the bail bond, or proceedings on attachment, shall stand as security with such leave to proceed thereon, as the judge may allow.

Rule 14.—Defendant's Appearance.

The appearance of the defendant indorsed on the *capais* shall be a sufficient appearance, where special bail is not required.

Rule 15.—Entering Rules of Course.

All rules, which, by the practice of this court, either party is entitled to enter without special application to the court, may be entered as well in vacation as in term, and shall have the like effect as if entered in term.

Rule 16.—Rule to Declare.

The defendant having perfected his appearance, may, at any time thereafter, take a rule against the plaintiff "to declare within twenty days after service of notice of the rule, or be non-prossed."

Rule 17.—Rule to Plead, &c.

The rule to plead, answer, or join in demurrer, shall be a rule of twenty days after service of a notice of the rule, and of a copy of the pleading to be answered; except the rule to join in demurrer to a plea in abatement, which shall be a rule of four days only.

Rule 18.—Service of Sci. Fa.

In suits commenced by *scire facias*, the service of the writ shall be personal on the party to be summoned, except in proceedings for the revival of a judgment, or continuance of other liens.

Rule 19.—The Same.

A *scire facias* upon recognizance, or to revive a judgment, or continue any other lien, shall be served by personal summons of the defendant, or, if he cannot be found, by leaving a copy at his residence or usual place of business: and the marshal shall return the manner of service. If the defendant has no known residence or place of business within the district, the plaintiff may proceed as heretofore by two writs of *scire facias*. But the return of "*nihil*" by the marshal shall also state the reason for not making the service as above directed.

Rule 20.—Rules to Plead on Sci. Fa.

Upon the return of "*scire feci*" to a *scire facias*, or "*nihil*" to an *alias scire facias*, the rule shall be that the defendant appear and plead in twenty days, or judgment; but notice of the rule to appear need not be served; nor notice of the rule to plead unless the defendant appear.

Rule 21.—Respondeas Ouster and Default.

When there shall have been a judgment of *respondeas ouster* on demurrer to a plea in abatement, the plaintiff having served the defendant with a notice of the judgment, may, after four days from the day of service of such notice, cause the default of the defendant in not pleading to be entered.

Rule 22.—Terms of Waiving a Default.

After default entered, the party shall not be bound to accept a declaration, pleading, or answer of course, unless the opposite party shall file an affidavit of merits, and serve a copy, pay, or offer to pay the costs of the default, and consent to place the cause in the same condition as if the pleading had been duly filed and served.

Rule 23.—Judgment after Default, and Damages.

The party in whose favor a default has been entered, may, at any day after, enter a rule for such judgment as is to be rendered by law by reason of the default; and in all actions sounding in damages after judgment for the plaintiff by default, or on demurrer, the damages shall be assessed on writ of inquiry; the damages on notes, bills, or specialties for the payment of money, shall be assessed by the clerk.

Rule 24.—Caption of Pleadings.

The caption of declarations and all subsequent pleadings may be of the return day of the writ, and need not be stated as of any term of the court. All pleadings must be signed by an attorney of the court.

Rule 25.—Order to Show Cause of Action, &c.

No order to show cause of action, mitigate bail, or for a bill of particulars, will be allowed, except upon affidavit showing probable cause therefor; nor unless the order to show cause is applied for within four days after the arrest; and for particulars, within four days after the pleading, under which it is demanded, is filed and served.

Rule 26.—Pleas to be Sworn, &c.

In actions founded upon contract, the defendant, if he shall appear and plead the general issue, shall annex to his plea, and file therewith an affidavit that he has a good and substantial defense upon the merits as he is advised by his counsel and verily believes, together with a certificate of counsel that he so advised the party; otherwise such plea may be treated as a nullity.

Rule 27.—Certificate of Counsel.

Special pleas or demurrers to pleadings shall be accompanied by a certificate of a counselor of this court, that in his opinion the special plea or demurrer is well founded; otherwise the plea or demurrer may be treated as a nullity.

Rule 28.—Plea in Abatement—When to be Served.

If a plea in abatement is not served within ten days from the day of service of a notice of the rule to plead and copy of the declaration, the plaintiff shall not be held to receive the same without a special order of the court or a judge.

Rule 29.—Amendment of Pleadings.

The plaintiff may at any time before default for not replying shall be entered, if the plea shall be a special plea in abatement, or within twenty days after service of a copy of the plea, if it shall be the general issue, amend the declaration; and the rule to plead, which may have been taken against the defendant, shall then be deemed to be from the day of the service of a copy of the amended declaration: and in like manner where there shall be a demurrer to a declaration or other pleading, not being a plea in abatement, the party against whom the demurrer shall be taken, at any time before default for not joining in demurrer is entered, may amend the pleading demurred to: and in these cases the respective parties may amend of course, and without costs; but shall not be entitled so to amend more than once. Nor shall any amendment be made without first entering in the book of common rules, a rule for the amendment, and either amending the pleading on file in a distinct manner, showing the amendment, or filing a copy of the amended pleading.

Rule 30.—Cause, when to be deemed at Issue.

If the defendant shall plead the general issue, and if the plaintiff shall not within twenty days after service of a copy of the plea, amend the declaration, or if either party shall in pleading, in any degree after the plea, tender an issue to the country, and if the opposite party shall not demur to such pleading within twenty days after service with a copy thereof, the cause shall, in each of these cases, be deemed to be at issue at the end of such twenty days.

Rule 31.—Notices to be in Writing, and How Served.

All notices shall be in writing; and unless the party to be served therewith be an attorney of this court, residing in the city of New York, or shall have employed an attorney of this court, it shall be sufficient service

upon him to put up any notice, declaration, or other pleading or paper, in a conspicuous place in the clerk's office; or the same may be given to the party. But if notice of a retainer shall be received after a copy of a declaration and notice of rule to plead shall have been put up in the clerk's office, and before the defendant's default has been entered, a copy of the declaration and notice of the rule to plead, stating the time when the declaration and notice were put up in the clerk's office, shall be served on the defendant's attorney: and the time of pleading, in such case, shall be from the day of serving in the clerk's office, deducting the time that may have elapsed between the receipt of the notice of retainer and such service on the defendant's attorney.

Rule 32.—Service of Notices and Pleadings.

After notice of retainer, all notices, pleadings, and papers, shall be served on the attorney: provided, however, that where a defendant is returned in custody and remains in jail, and has retained no attorney, a copy of the declaration and notice of rule to plead shall be delivered to such prisoner, or to the officer or keeper of the jail in whose custody he is; and, provided further, that where the object is to bring a party into contempt for disobeying any rule or order of court, the service shall be on him personally, unless otherwise specially ordered by the court.

Rule 33.—Attorney's Agents and Service.

When an attorney of this court who does not reside in the city of New York, has no agent in this court, but has one in the supreme court of the state, residing in this city, he shall be considered the agent of such attorney in this court; and if there is no such agent, service of all notices and papers directed to the attorney, by affixing the same in a conspicuous place in the clerk's office, shall be sufficient.

Rule 34.—Appointment of, and Service on Agents.

Service on an attorney's agent shall be as valid in all cases, as if made on the attorney himself. The appointment of agents in this court shall be in writing, signed by the attorney and filed with the clerk, who shall keep a catalogue of the same with the attorney's names alphabetically arranged.

Rule 35.—Notices of Trial, &c.

Notices of trial, argument, hearing, or motion, are to be for the first day of term: if however sufficient cause is shown therefor, an order may be obtained from the court or a judge, permitting such notice to be given for any other day of term including times to which the court may stand adjourned.

Rule 36.—Notices of Justification.

Notices of justification of bail, notices of motions, argument, or hearing, shall be served at least four days before the time of such justification, hearing, &c., and eight days, when the same shall be served pursuant to the 31st and 34th rules of this court. Notices of trial shall be at least eight days.

Rule 37.—Computation of Time.

The day on which any rule shall be entered, or order, notice, pleading, or paper served, shall be excluded in the computation of the time for complying with the exigency of such rule, order, notice, pleading, or paper; and the day on which a compliance therewith is required, shall be included: except where it shall fall on a Sunday, in which case the party shall have the next day to comply therewith.

Rule 38.—Notice of Enumerated Motions.

The attorney of either party may give notice of argument of issue in law, or on writs of error or cases made, and set them down for hearing, and either party shall be at liberty to bring them on when called upon his notice, and if the other party does not appear, he may take such judgment or order, as he is entitled to thereupon, by default.

Rule 39.—Motions to be made before the court.

Motions in arrest of judgment; to set aside nonsuit; verdict, or inquisition otherwise than for irregularity only; to withdraw pleadings from the files; or alter the minutes of court; to quash indictments; for a new trial; in relation to writs of error, mandamus, or certiorari; to stay proceedings beyond a stated term; or for the judgment of the court on issues at law or case made; or for the relief of special bail after they are fixed at law, must be made before the court in term.

Rule 40.—Other Motions.

All other motions may be made before either of the judges out of court.

Rule 41.—Commissions.

Commissions to take testimony may be taken out by either party after suit brought.

Rule 42.—Notice thereof.

Four days' notice shall be given in writing to the opposite party or his attorney, of the intention to sue out a commission, together with the names

of the commissioner or commissioners, witness or witnesses, when known, and residence and occupation of commissioners and witnesses, when known, and of the facts expected to be proved.

Rule 43.—Rules therefor.

At the expiration of the four days, a rule may be entered of course, in the common rules ordering such commission, unless proceedings are previously stayed by a judge, or unless the attorney of the opposite party file a written consent to admit on the trial, that the witness named will swear to the facts stated.

Rule 44.—Seal, Directions, and Costs.

All commissions must be issued under the seal of the court and signed by the clerk, with the name of the attorney moving it subscribed thereto. They may be directed to one commissioner or three; but no costs shall be taxed for the services of more than one commissioner, unless both parties unite in requiring a greater number.

Rule 45.—Proceedings to be Stayed.

After a commission is actually issued and in a train for execution, proceedings may be stayed in the cause by a judge, on proper cause shown, a reasonable time for the execution and return thereof.

Rule 46.—Where Moved.

A commission may be moved for before the court, or a judge out of court (under special circumstances to be allowed by the court or judge), and the proceedings in such case are to be conformable to the rules of this court and the district court applicable thereto.

Rule 47.—How Executed.

A commission may be executed by a majority of the commissioners named therein, if more than one, and shall be accompanied by written or printed instructions directing the manner of its execution and return.

Rule 48.—Interrogatories—How settled.

The interrogatories for the direct and cross-examination shall be annexed to the commission, and in case the parties disagree respecting them, be presented to a judge for his allowance at one time; a copy of the direct interrogatories, with a notice of the time of presenting the same for allowance, shall be served eight days before such time, and copies of cross interrogatories four days after such service.

Rule 49.—When Witnesses not named—Objections.

Witnesses not named in the commission may be examined by the commissioners, and if the depositions are objected to on trial, the court will decide upon the sufficiency of the excuse for not naming them; all objections to the depositions for this cause, shall, however, be deemed waived, unless notice in writing is given thereof to the opposite party, within four days after the commission is opened.

Rule 50.—Return of Commissions.

Commissions executed within the United States may be returned by mail, addressed to the clerk, and having the title of the cause marked upon the envelope; those executed out of the United States, may be returned in like form, by the usual mode of transmitting letters between such place and the city of New York.

Rule 51.—Judgment as in case of Nonsuit.

Motion for judgment, that the suit be dismissed for not going to trial, may be made after the discharge of the jury, in the same term for which notice of trial was given, or at the next term; and the plaintiff shall not be permitted to stipulate to try the cause at the next term, unless upon sufficient excuse, to be approved by the court, for not having proceeded to trial; and if the costs ordered to be paid on permission to stipulate, be not paid within twenty days after such permission, the defendant may, after demand and service of a certified copy of the order to pay costs, and of the taxed bill, on filing an affidavit of such demand and service, and of non-payment, enter judgment that the suit be dismissed in the same manner as if no permission had been given.

Rule 52.—Papers to be furnished to the Court.

Each judge shall be furnished at the argument, with a copy of the case, bill of exceptions, demurrer to evidence, demurrer book, or special verdict; or, on motion for a new trial upon newly discovered evidence, with copies of the affidavits or papers, whereon the motion is founded or opposed; or, if the motion be in arrest of judgment, with copies of the pleadings, or so much thereof as may be necessary; together with the points intended to be made by the respective parties. And copies of the affidavits and papers on which such motions are founded, shall be served on the opposite party, four days before the day for which the motion is noticed.

Rule 53.—Security for Costs.

If the plaintiff at the commencement of the action be, or pending the same become, a non-resident of this State, or if on demand in writing by the defendant's attorney, like notice of his residence shall not be, the defendant may, upon proof of either such cause, enter a rule of course, that the plaintiff give security for costs, within ten days after service of notice thereof, or be non-prossed.

Rule 54.—Bond and Justification.

The security shall be a bond to the opposite party, filed in the clerk's office, duly executed by some sufficient person residing within the district, in the penalty of one hundred dollars (unless a larger penalty shall be directed by the court or a judge), with a condition that if the plaintiff shall discontinue his action, or it be dismissed or non-prossed, or if judgment shall pass against him therein, he shall pay all such costs as shall be adjudged or awarded against him in such action. The sufficiency of the security may be excepted to; and thereupon such security shall justify before the clerk within the respective periods, and in like manner as is the practice with respect to special bail. And on failure of giving such security, or in default of such justification, and on due proof of the service of notice of such rules, and of any such default, a judgment of *non-pros* may be entered.

Rule 55.—Notes of Issue, and Calendar.

When a cause is noticed for trial or argument for the first day of the term, a notice thereof, with a note of the issue and of the pleadings and the attorneys' names, shall be delivered to the clerk on or before the Thursday next preceding the term. And the clerk shall, as early as the following day have the calendar of causes to be tried, made up, arranging them according to the dates of their issues. And no cause shall be put upon the calendar, without the special order of the court, unless the note of issue shall be furnished as is hereby required.

Rule 56.—Death of a Party.

Where an action is pending in this court, and either party dies before final judgment and the cause of action survives, the legal representatives of the deceased party may, on presenting letters testamentary or of administration in open court, be admitted voluntarily to come in and prosecute or defend such suit, as party thereto; the letters testamentary or of administration remaining deposited in court during such term, to the end that any legal objection to the right of such representative to appear, may be taken.

Rule 57.—The Same.

The order admitting such party, unless assented to by the opposite party, shall be *nisi* in the first instance, and become absolute if sufficient cause be not shown against it, within four days after notice thereof.

Rule 58.—The Same.

If such representative be appointed more than ten days before a stated term, an order may be entered *nisi*, in the common rules, authorizing him to prosecute or defend, and shall become absolute if not vacated or suspended, by order of a judge or the court, within ten days after service of a copy thereof on the attorney of the opposite party.

Rule 59.—The Same.

When such rule is entered out of court, the letters testamentary or of administration, shall at the same time be deposited with the clerk, and so remain until the succeeding term, or until the rule becomes absolute, or is vacated as before provided.

Rule 60.—Venire for Jurors.

The clerk shall, fifteen days before a stated term, (and as many days before a special session, or adjourned term, as circumstances will permit, where fifteen days do not intervene), issue to the marshal a venire requiring him to summon twenty-four grand jurors, and thirty-six petit jurors. If the state of public business requires a greater number of petit jurors, a mandate shall be obtained from one of the judges, and be indorsed on the venire, directing the additional number of jurors to be summoned, which shall then be regarded as part of such venire.

Rule 61.—Jurors—When to be summoned.

All jurors residing out of the city of New York, shall be summoned at least six days, and petit jurors residing within the city, four days before the return day of the venire.

Rule 62.—Form of Venire.

The venire shall specify the qualifications of jurors; "free and lawful men, resident within the southern district of New York, above the age of twenty-one, and under the age of sixty years, each of whom shall have in his own name, or right, or in trust for him or his wife, a freehold in lands, messuages, and tenements (or a personal estate if resident within the city of New York), of the value of one hundred and fifty dollars, free of all reprises, debts, demands, or incumbrances whatsoever."

Rule 63.—Return—Panel to be furnished.

The marshal shall annex to the return of every venire, a panel of jurors summoned, designating their names, residence, and occupation, and, at the request of any party indicted, or having a civil cause on the calendar for trial, the clerk shall furnish him with a copy of the panel.

Rule 64.—Inquests.

Inquests in causes may be taken, out of their order on the calendar, at the opening of the court, or on any day after the first day in term, provided the intention is expressed in the notice of trial, and a sufficient affidavit of merits be not filed and a copy thereof served: and when an inquest is regularly taken, the same shall not be set aside except on payment of the costs thereof, and of opposing the motion.

Rule 65.—Rules for Judgment.

Rules for final judgment shall be absolute from the time of entry, unless conditional in their terms; and the party obtaining the same is entitled to proceed thereon, *instantly*.

Rule 66.—Proceedings—How stayed.

Proceedings upon judgments may be stayed by motion to the court, or by order of a judge, and a case agreed or settled, or a bill of exceptions signed, will, *per se*, stay proceedings thereon.

Rule 67.—Case to set aside Nonsuit, &c.

Whenever it shall be intended to move to set aside a verdict, except for irregularity, a case may be prepared by the party intending the motion, and a copy thereof served on the opposite party, before judgment is rendered and entered upon such verdict, who may, within four days thereafter, propose amendments thereto, and serve a copy on the party who prepared the case; and if the parties cannot agree together in regard to such amendments, then, within four days thereafter, either party may give the other notice to appear, within a convenient time, and not more than four days after service of such notice, before the judge who tried the cause, to have the case and amendments settled: and the judge shall thereupon correct and settle the same, as he shall deem to consist with the truth of the facts; but if the parties shall omit, within the several times above limited, unless the same shall be enlarged by a judge, the one to propose amendments, and the other to notify an appearance before the judge, they shall respectively be deemed, the former to have agreed to the case as prepared, and the latter

to have agreed to the amendments as prepared: and if the party omit to make a case within the time above limited, unless the time shall be enlarged as aforesaid, he shall be deemed to have waived his right thereto.

Rule 68.—Notice of Motion for a New Trial.

If judgment has been rendered upon a verdict, the party intending to move for a new trial, shall give four days notice in writing to the opposite party, of any motion to stay execution thereon, and also of the petition intended to be filed pursuant to 18th section of the act of Sept. 24, 1789, unless a shorter time be allowed by the court or a judge.

Rule 69.—Bill of Exceptions.—Proceedings.

Where exceptions to the opinion of the court are taken by either party on the trial of a cause, or there is a demurrer to evidence interposed, or a special verdict found, the party shall not be required to prepare his bill of exceptions at the trial, or his demurrer or statement of the evidence, or to put in form the special verdict, but shall merely reduce such exceptions to writing, or make a minute of the demurrer to the evidence, and of the facts found specially by the jury, as the case may happen to be, and deliver it to the court; or the court will themselves, at the request of either party, note the point and the bill of exceptions, demurrer to evidence, and special verdict, shall afterwards be drawn up, amended and settled, within such times, and under the same rules and regulations as are *observed* with respect to cases.

Rule 70.—The Same.

The same rules and regulations shall apply to cases made upon verdicts taken subject to the opinion of the court, and it shall be the duty of the party in whose favor such verdict shall be taken, to make and prepare the case. Where a case shall be made, with leave to turn the same into a special verdict, or bill of exceptions, the party shall not be at liberty to do either at his election, but the court may, if they think proper, prescribe the one which he shall adopt.

Rule 71.—Stay of Proceedings.

When a bill of exceptions shall be taken on the trial, the same may, before judgment, be used instead of a case on motion for a new trial, and notice of such motion, together with service of a copy of such bill of exceptions, shall operate to stay all further proceedings, until the decision of the court; provided that proceedings shall not be longer stayed than if a case had been regularly made.

Rule 72.—Division of Opinion.

In cases of division of opinion between the judges on points of law, the court, at the instance of either party, will forthwith note such points in writing.

Rule 73.—Proceedings thereon.

Either party may, within four days thereafter, serve on the other a statement, or certificate in writing, of such points, and also of facts in the case upon which the points arose, and if no amendments are proposed thereto within two days, such statement shall be filed, and shall be engrossed by the clerk, and be certified to the supreme court, under the seal of this court.

Rule 74.—The Same.

In case of disagreement between the parties, the statement or certificate shall be submitted to the court, and be settled by the judges, as in the matter of a case, or bill of exceptions.

Rule 75.—Criminal Cases.

The like practice shall be pursued, in certifying a division of opinion in proceedings on indictments.

Rule 76.—Placita of Records.

The placita of judgment records shall be of the day when issue was joined, or the default was entered, and need not be stated as of any term of the court.

Rule 77.—Continuances Abolished.

Continuances by *vice comes non misit breve*, or *curia advisari vult*, are abolished in this court, and instead thereof, an entry shall be made that the cause was duly continued until the time when the trial, judgment, or other act of the court therein, requiring an entry on the record was had.

Rule 78.—Sale of Real Estate under Execution.

In the sale of real estate under execution issuing from this court, the marshal shall conform his proceedings to the directions of the law of this State, now in force, in relation to the sale of real estate on execution, and in addition to the certificate filed with the clerk of the county, where the lands sold, are situated, shall file a copy thereof with the clerk of this court.

Rule 79.—Redemption of Land Sold.

Redemption of lands, sold under execution out of this court, may be made in the same manner, and with like effect, and by the same persons, as prescribed by the law of this state now in force. And the sales by the marshal shall be made subject to such redemption.

Rule 80.—Security on Writ of Error.

On suing out a writ of error to the district court, and before the clerk seals the same, the plaintiff in error (other than the United States), shall file security, with two or more sureties, to be approved by one of the judges of the court (in the sum of five hundred dollars, when the writ of error does not operate as a supersedeas), conditioned to prosecute his writ of error to effect, and answer all damages and costs awarded against him.

Rule 81.—Return to Writ of Error.

The clerk shall forthwith make return to a writ of error, by transmitting a certified copy of the record, and all proceedings in the cause (including the bill of exceptions, when one has been signed by the judge, and filed by the party), under the seal of the court.

Rule 82.—Assignment and Joinder of Errors.

The plaintiff in error shall assign errors within two days of the term in which the writ is returned, first following the return thereof, and the defendant shall join issue, within two days after the assignment, unless, in either case, the court by special order shall enlarge the time.

Rule 83.—Order to appear and join in Error.

No further order on the defendant in error to appear, and join in error, need be given, than the citation required by statute, provided that the same is served twenty days previous to the return of the writ of error.

Rule 84.—Judgment for not assigning Errors.

If the plaintiff in error fails to appear and file his assignment of errors, within two days after the return of the writ of error, the defendant may have a rule of course, for judgment of *non pros*. But if there are not two days remaining in term after the return of the writ of error, the plaintiff will be entitled to the two first days of the succeeding term.

Rule 85.—Amount—How proved.

The plaintiff in error may, by affidavit, show, and prove the value of the matter in dispute, in order to sustain the *jurisdictio* of the court, and a suggestion shall thereupon be entered on the record.

Rule 86.—Certiorari for Diminution.

No *certiorari* for diminution shall issue, without the affidavit of the party, showing reasonable cause for alleging diminution, and in what such diminution consists; nor shall it be allowed after issue in error joined, without special order.

Rule 87.—When Plaintiff ex-parte.

In every cause in which the defendant in error fails to appear, the plaintiff in error may proceed *ex-parte*.

Rule 88.—When Writ of Error issued.

When a bond with sureties is approved by the judge and filed, the clerk may seal a writ of error, without mandate or allowance by the judge.

Rule 89.—Continuance of Order to Stay Proceedings.

A judge's order, staying proceedings, accompanied with service of notice of motion, and copies of proofs to be used thereon, shall stand in force until revoked or modified by one of the judges, or until the order of the court thereon. But if the party obtaining such order, shall not proceed thereon at the next term, the opposite party may enter an order of course, vacating such stay of proceedings, and for his costs in consequence thereof.

Rule 90.—Consents to be in Writing.

No agreement, or consent, between the parties or their attorneys, in respect to the proceedings in court, shall be binding, unless reduced to writing, and signed by the party against whom it shall be alleged or suggested.

Rule 91.—Attorney's Liability for Costs.

When a suit shall be commenced for a non-resident, and also when, at any time pending the action, the plaintiff shall remove out of the district, and the attorney shall thereafter proceed in such suit without security for costs being given, he shall in either case be deemed to have become security

for costs to an amount not exceeding one hundred dollars. Provided that this rule shall not apply where one of several plaintiffs resides within the district.

Rule 92.—Payment of Money into Court.

Upon payment of money into court, except with a plea of tender, the plaintiff, if he accept thereof in full of the debt or damages claimed, shall serve the defendant with a bill of costs, and give two days' notice of taxation: and unless the defendant pays the costs, within two days after the same shall be taxed, the plaintiff may take out the money and proceed in the cause, and shall be entitled to judgment for the amount so taken out of court: but execution shall be indorsed, "to levy the costs of suit." And where money is paid into court, the amount shall not be struck out of the declaration or verdict, but the plaintiff shall deduct the same from his execution.

Rule 93.—Attorneys, &c.—How Admitted.

Attorneys and counselors of the supreme court, and solicitors and counselors of the court of chancery, of this State, may, on presentation of their licenses to the clerk and his report of their degree, have an order of course entered in open court in term time, or in the common rules in vacation, admitting them to the same standing in this court; and attorneys and solicitors of the said courts, may also be admitted as proctors, and counselors of the said courts may be admitted as advocates, on the admiralty side of this court; all such officers first taking and subscribing the oaths of office, prescribed by the constitution and laws of the United States.

Rule 94.—Clerk to Tax Costs and Sign Records.

The clerk may tax or certify bills of costs, and sign judgment records. In case of the absence of the clerk from the city, or his inability to transact business, his deputy or chief clerk, is authorized to sign judgments, and tax or certify all bills of costs in this court, other than those of the clerk.

Rule 95.—No Costs—when.

No costs shall hereafter be taxed by either party, as against the other, on motion made pursuant to the 40th rule of this court, except for disbursements actually incurred, unless upon proceedings taken under the 5th rule of this court.

Rule 96.—Attorney's Costs.

The costs of parties, except as otherwise regulated by law, shall be allowed according to the rates, for the time being, in the supreme court of this State; and for taking depositions, under the act of Congress, or under commissions, the same charges, and no other, shall be taxed, as if the depositions had been drawn and engrossed by the attorneys; and no other charges or expenses, incurred in taking such depositions, or executing or returning commissions, shall be taxed by one party against the other.

Rule 97.—Appeals from Taxation.

Appeals from a taxation of costs may be made *instantly* to a judge out of court, but no costs shall be allowed to either party on such appeal.

Rule 98.—Notices before Judge out of New York.

No notice (except to settle a case, or bill of exceptions) can be given for proceedings, before a judge, out of the city of New York, without an order first obtained for that purpose, or an affidavit showing both judges absent from the city.

Rule 99.—Setting Down Causes.

Causes will be called in their place on the calendar, and no motion will be entertained to set them down for a particular day, and if not moved for trial, when called, the party entitled to bring them on will be regarded in default, unless the entire calendar is called again.

Rule 100.—Counsel—How to Sum Up.

Where two counsel, on each side, either in civil or criminal causes, sum up to the jury, or argue to the court, the arguments shall be heard alternately, and not from both counsel consecutively on the same side.

Rule 101.—Satisfaction of Judgments.

The clerk of this court, and, in case of his sickness, or inability to transact business, or absence from the city, his deputy, or chief clerk, being of the degree of attorney, or counselor of this court (and whose appointment shall have been duly filed in the clerk's office), may take the acknowledgment of satisfaction of judgment entered in this court.

Rule 102.—Rules of District Court Adopted.

In cases not provided for by the rules of this court, the rules of the district court of the southern district of New York, for the time being, whether now in force, or subsequently adopted, so far as the same are applicable, are to be considered as rules of this court.

Rule 103.—Service of Process where Marshal interested.

The sheriff, and under sheriff, of the city and county of New York, are appointed to serve process issued out of this court, in all causes in which the marshal of the southern district of New York, or his deputy, is a party.

Rule 104.—Commissioners Appointed.

The clerk of this court, and his chief clerk or deputy, the general deputy of the marshal of the southern district of New York (and the said chief clerk or deputy of the clerk, and general deputy of the marshal, being designated by appointments duly filed in the clerk's office), and the clerk of each of the counties within the southern district of New York (other than the city and county of New York, for the time being, shall, *ex officio*, be commissioners to take affidavits, and acknowledgment of bail, in civil causes, depending in the courts of the United States, pursuant to the provisions of the acts of Congress, in that behalf: And all orders heretofore made for the appointment of such commissioners are hereby annulled.

EQUITY RULES.

Rule 105.—Motion for Injunction.

No motion for an injunction (except to stay waste) shall be heard, unless a copy of the bill, and of the depositions to be offered in its support, shall be served on the adverse party, or his attorney, at least four days before motion made.

Rule 106.—Cause against the Motion—How Shown.

The defendant may show cause against the allowance of an injunction, either by plea, answer, or demurrer to the bill, or by parol exception to its legal sufficiency, or by deposition, disproving the equity on which the motion is founded.

Rule 107.—Supporting Proofs.

Suppletory or supporting proofs may, at the discretion of the court or judge, be offered by the complainant to rebut the cause shown by the defendant; but the reception of such additional proofs is not to permit the introduction of further proofs in opposition thereto, by the defendant, previous to the final hearing upon the merits.

Rule 108.—Testimony—How Taken.

If a general commission is not issued, pursuant to the 25th rule of the supreme court, within ten days after replication filed, either party may give notice of the examination of witness before the standing examiner of this court; and three months from the time of the replication shall be allowed the parties for taking their depositions before the examiner.

Rule 109.—Hearing on the Pleadings.

When no proceedings are taken by either party, within thirty days after replication, for the examination of witnesses, out of court, either party may set the cause down for hearing upon the pleadings.

Rule 110.—Oral Proof in Court.

Whenever it is intended to offer oral proof in open court, the party proposing it shall give due notice to the opposite party of the names of the witnesses, the matters to which they are to be examined, and of the reasons upon which he will move for an examination.

Rule 111.—Motions before a Judge.

All special motions, in reference to matters of practice, may be made in open court, or before a judge at chambers.

Rule 112.—Depositions—Proceedings where.

No rule, or order, need be entered for the publication of testimony: but so soon as the commissioner, or examiner, shall have completed the testimony offered, the party taking it shall cause the deposition to be filed in the clerk's office, and forthwith give notice thereof to the adverse party. Either party may thereupon enter a rule, of course, that the clerk open the commission, or deposition, and file the same.

Rule 113.—Exceptions to Testimony.

Within four days after the clerk shall have prepared copies of the depositions (provided the same were applied for in two days after the notice of the filing thereof), the adverse party may give notice of exception, before a judge at chambers, to the proofs, or any part of them, on account of any irregularity in taking the deposition, or executing the commissions: and if no such notice of exceptions is given, all objections to the form, or manner, in which the proofs were taken, shall be deemed waived.

Rule 114.—Enrolling Decree—When Suspended.

When a motion for re-hearing is made during the term, at which a decree has been rendered, the enrolling, or recording of such decree, shall be suspended, until the final disposition of such motion by the court.

Rule 115.—Adjournment by a Master.

A master, or examiner, in taking proofs, or in matters of reference, shall not, without the written consent of all parties, or the authorization of one of the judges, adjourn proceedings, pending before him, for a longer time than ten days.

Rule 116.—Appeals.

An appeal can be taken from no other than final decrees.

Rule 117.—When Decree Final.

A decree shall be deemed final when in a state for execution without further action of the court below.

Rule 118.—Appeals from, and Return.

Every appeal to the circuit court, in a cause of admiralty and maritime jurisdiction, shall be in writing, signed by the party, or his proctor, and delivered to the clerk of the district court, from the decree of which the appeal shall be made; and it shall be returned to the court, with the necessary documents and proceedings, within twenty days, and by the first day of the term next after the delivery thereof to the clerk, unless a longer time is allowed by the judge.

Rule 119.—Matter of Appeal.

The appeal shall briefly state the prayers or allegations of the parties to the suit in the district court, in the proceedings in that court, and the decree

with the time of rendering the same. It shall also state whether it is intended, on the appeal, to make new allegations, to pray different relief, or to seek a new decision on the facts, and the appellants shall be concluded in this behalf, by the appeal filed.

Rule 120.—Service of Appeal.

A copy of the appeal shall, at the same time, be served on the proctor of the appellees, in the court below. And an affidavit of the due service of such copy shall be filed with the appeal. And no process or order shall be necessary to bring the appellees into this court.

Rule 121.—Return to Appeal.

If in the appeal it shall not be intended to make new allegations, to pray different relief, nor to seek a new decision of the facts, then the pleadings, evidence and decree in the district court, with the stipulations in the cause, and the clerk's account of the funds in court, in the cause, if any, shall be certified to this court with the appeal. But in all cases the statement of facts agreed between the parties, or settled by the judge of the district court, and on file, according to the practice of that court, may be certified in the place of the evidence at large.

Rule 122.—The Same.

If it shall be intended to seek only a new decision of the facts, then the pleadings of the parties, with the stipulations in the cause, and the clerk's account of the funds in court, if any, and the exhibits and depositions in the cause, shall be certified to this court with the appeal. But the proofs need not be certified unless specially required by the appellant or ordered by this court.

Rule 123.—The Same.

If it shall be intended to make new allegations, or to seek new relief, then the return to the petition of appeal shall only contain copies of the process issued upon the libel, and of the return thereof, the account of the clerk of the funds in court, in the cause, the depositions and exhibits, and the stipulations in the cause.

Rule 124.—Time for Return.

The appellant shall cause the notice of appeal, and an affidavit of the service of a copy thereof, with the documents required to be returned with the appeal, to be filed in this court within four days after the return is completed by the clerk; otherwise the appeal shall not be received, and shall be

deemed deserted; and a certificate in this behalf shall be made to the court from which the appeal is made, which may proceed to the execution of its decree.

Rule 125.—When Cause in Court.

This court shall be deemed possessed of the cause, from the time of filing the appeal, with the documents required to be returned therewith, in this court.

Rule 126.—When Appellant Proceeds ex-parte.

If the appellee does not enter his appearance within the two first days in term, succeeding the filing the appeal, and proceedings, and affidavit of service of notice thereof on him, the appellant may proceed *ex-parte* in the cause, and have such decree as the nature of the case may demand.

Rule 127.—Answer—Notice of Hearing.

No answer, or issue, need be given to the appeal. Each party may notice the cause for hearing, for the term to which the appeal is made (if made in term time) or if made in vacation, for the term next succeeding.

Rule 128.—Writ of Inhibition.

A writ of *inhibition* will be awarded, at the instance of the appellant, when circumstances require, to stay proceedings in the court below; notice of such application having been previously given.

Rule 129.—Writ of Mandamus.

A *mandamus* may in like manner be obtained to compel a return of the appeal when unreasonably delayed by the clerk, or court below.

Rule 130.—Notice of Opposition to New Proofs.

If the appellee shall have any cause to show why new allegations, or proofs, should not be offered, or new relief prayed, on the appeal, he shall give four days' notice thereof, and serve a copy of the affidavit containing the cause intended to be shown: and such cause shall be shown within the two first days of the term; otherwise the appeal shall be allowed according to its terms.

Rule 131.—Proceedings where New Allegations.

If new allegations are to be made, or different relief prayed, in this court, then the libelavit in the district court, shall exhibit, in this court, a

libel, on oath, within ten days, to which the adverse party shall, in twenty days, answer on oath, subject in each case to the extension of those periods, by order of either of the judges of this court; and on a default in this behalf, the court will on motion, without notice, make such order for finally disposing of the cause, on the default of the party, as the nature of the case may require.

Rule 132.—Hearing—When.

After the libel and answer, whether newly filed in this court, or certified from the district court, shall be filed in this court, the cause shall be proceeded in to a hearing, as in other cases. But where interrogatories have been answered in the district court, or written testimony taken, the same may be used in this court.

Rule 133.—Motion to enforce Decree Below.

The appellee may move this court to have the decree made in the district court carried into effect, subject to the judgment of this court, or of the supreme court on appeal, upon giving his own stipulation to abide and perform the decree of such courts: and this court will make such order, unless the appellant shall give security by the stipulation of himself, and competent sureties, for payment of all damages and costs, on the appeal in this court, and in the supreme court, in such sums as this court shall direct.

Rule 134.—When Decree Executed.

In cases where an appeal shall lie from the decree of this court, the final decree shall not be executed until ten days shall have elapsed from the pronouncing or filing of the decision of the court.

Rule 135.—Appeal to Supreme Court.

When appeal shall be made from the decree of this court, the appellant shall, within four days from the pronouncing or filing of such decision, unless further time is allowed by the judge, make and serve on the adverse party a statement of the testimony on the trial, excepting such evidence as was in writing, which shall be properly referred to therein. The party on whom the same shall be served shall, in four days after such service, propose amendments thereto, or the statement shall be deemed acquiesced in, and the statement and amendments, unless acquiesced in, shall be submitted by the appellant to the judge, in four days afterwards, for settlement; and the same, when settled, shall be engrossed by the clerk, and, with the written evidence, shall be deemed the proofs on which the decree is made, and shall operate as a stay of further proceedings in this court.

Rule 136.—District Court Rules Adopted.

In all cases, in civil causes of admiralty and maritime jurisdiction, not expressly provided for by the foregoing rules of this court, the rules of practice of the district court for the southern district of New York being in force at the time, and whether established before or after these rules (not being inconsistent with these rules), are adopted, and are to be received as rules of practice in this court.

At a stated circuit court of the United States, held at the city of New York, in and for the southern district of New York, on the 28th day of April, A. D. 1838—

Present, the Hon. SAMUEL R. BETTS.

Ordered, That the rules adopted for the practice of this court go into operation on the first Monday of August next.

A true copy from the minutes.

FRED. I. BETTS, *Clerk*.

SUBSEQUENT RULES, AND AMENDMENTS.

Imprisonment—Where.

MARCH 4th, 1840.

In all cases in which persons convicted of offenses against the statutes of the United States shall be sentenced to imprisonment, and the sentence shall not also specify that the party be kept at hard labor, it shall be the duty of the marshal to cause such party to be imprisoned in any one of the prisons within the city and county of New York which he may select for the purpose.

Rule 137.—Juries—How drawn.

Hereafter, jurors to serve in this court shall be designated by ballot, according to the method of forming grand and petit juries now practiced in the highest court of law in this State, except that the panels shall be certified to the marshal by the clerk of this court, or his deputy, if present at the drawing, and except, further, that it shall not be necessary for either judge

of this court, or any judge of a State court, or justice of the peace, to be present at the drawing, or for any notice thereof to be published.

Rule 138.—The Same.

The jurors shall be drawn from the ballot-boxes kept by the clerk of the city and county of New York, in all cases except as is provided for and directed by Rule 140. In case of default or defect of jurors at term, or the discharge of a panel, and the summoning a new one in its place, the venire may be made returnable forthwith, or at any convenient day in term, and, in either such case, the drawing shall be at the time directed by the court or either of the judges.

Rule 139.—And full number obtained.

In case a sufficient number of grand jurors shall not appear on the return of the venire, or, after appearing, shall be excused by the court, or absent themselves, so that there shall be in attendance less than sixteen grand jurors duly qualified, the court may, by order, direct the marshal forthwith to summon the number of persons necessary to complete such grand jury.

Rule 140.—Juries, whence drawn.

The court, or either of the judges, may, from time to time, by order to the clerk (to be by him indorsed on the venire), direct the whole, or any part of the jurors required to serve at any term, or portion of a term, to be returned from such parts of the district, besides the city and county of New York, as the court or judge may designate, so as shall be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly to burthen the citizens of the district with jury service.

Rule 141.—The Same.

In executing venires issued pursuant to Rule 140, the clerk assisting in drawing shall insert upon the panels, and certify, the names of qualified jurors residing in the following places only in the counties hereafter named, (and shall omit the names of jurors drawn from the box who reside elsewhere), to wit: in Stuyvesant and Hudson, in Columbia county; in Athens and Catskill, in Greene county; in Sangerties and Kingston, in Ulster county; in Poughkeepsie and Fishkill, in Dutchess county; in Newburgh and New Windsor, in Orange county; in Castleton, in Richmond county; in Brooklyn, Williamsburgh and Flatbush, in Kings county, and in Flushing and Jamaica, in Queens county.

Rule 142.—When County Clerks may draw.

The clerks of the several counties within the district in which venires are to be executed, are empowered to draw jurors and certify panels

for this court, in the same manner practiced for the highest court of law of the State, when the clerk of this court or his deputy is not present at the drawing.

Rule 143.—Where County Clerk refuses to act.

In case the clerk of the city and county of New York, or any county in this district, shall refuse to draw jurors for this court, or shall not permit the officers of this court to use the boxes provided and kept in his office for drawing juries to serve in the State courts, the marshal shall immediately thereupon procure copies of the lists of jurors qualified to serve in the highest court of law of the State, prepared, from time to time, pursuant to the law of the State, in the different wards of the city of New York, and in the other places designated in Rule 141, and file the same with the clerk of this court, verified by the official certificate of the officers with whom the same are filed or deposited, or by that of the officers required by the law of the State to prepare and authenticate them, or, if such proof is refused, or cannot be obtained, then by affidavit; and the clerk shall thereupon prepare proper boxes and ballots conformably to the practice in the State courts, and the drawing of jurors from such boxes shall be made and conducted thereafter by the marshal and clerk according to the mode now practiced under the law of the State, except that a publication of any previous notice thereof, or the attendance thereat of either of the judges of this court, or any other magistrate, shall not be necessary.

Commissioners to take Affidavits, &c.

MARCH 12th, 1841.

The clerk of this court, and also the clerk of the district court of the United States for the southern district of New York, and the chief clerk, or deputy of each of said clerks (the said chief clerk or deputy being designated by appointment duly filed in the office of the said clerks respectively), for the time being, shall, *ex officio*, be commissioners to take affidavits and acknowledgments of bail in civil causes depending in the courts of the United States, pursuant to the provisions of the acts of Congress in that behalf; and the said clerks and deputies are also hereby respectively authorized and empowered to take bail within the southern district of New York pursuant to the act of Congress of March 2d, 1793.

The Same.

APRIL 17th, 1845.

So much of standing Rule 99 of this court as prohibits motions to set down causes placed on the calendar for a particular day, and also so much of standing Rule 104, as designates and appoints the general deputy of the marshal of the southern district of New York, *ex officio*, a commissioner to take affidavits and acknowledgments of bail, in civil causes depending in the courts of the United States, be, and the same are, hereby abro-

gated and repealed, but no other portions of the said rules are to be affected by this order.

Masters and examiners in chancery, designated and appointed by this court to act as such, on the equity side thereof, shall, *ex officio*, be commissioners to take affidavits and acknowledgments of bail, in civil causes depending in the courts of the United States, and to take bail within the southern district of New York, pursuant to the provisions of the several acts of Congress in that behalf; and every such master in chancery for the time being is hereby designated and appointed, *ex officio*, commissioner as aforesaid. This rule or order is not to affect the rule or order of the court in this behalf, entered March 12th, 1841.

Costs of Parties.

JUNE 28th, 1845.

In place of the provisions of Rule 96 of this court for the taxation of costs of parties, the costs of parties (their attorneys, solicitors and counsel) shall be allowed and taxed conformably to the regulation and appointment of costs made in the last proviso but one to section one, No. 167, of the act of Congress approved May 18th, 1842, entitled "An Act making appropriations for the civil and diplomatic expenses of Government for the year 1842."

For services rendered pursuant to the course of practice in this court, for which no fees are appointed specially by acts of Congress, or of the State of New York, in force, there shall be allowed, on taxation, the same rates of compensation as, by the usages or adjudications of this court, or the supreme court of the United States, were allowed therefor at the time of the passage of the act of May 18th, 1842, aforesaid.

In all cases of taxation of costs, fees shall be allowed, as having been appointed by the laws of the State, only according to the rates allowed for like services, in similar cases, in the highest courts of law or equity, of original jurisdiction, of the State of New York.

Papers on Appeal.

SEPTEMBER 2d, 1845.

On appeals, no paper proceedings shall be read in this court, unless they be papers duly sent up by the court below, and on file in this court, or original papers on the files of this court, or copies of such papers duly certified by the clerk of this court.

Evidence to sustain Injunctions.

MAY 18th, 1846.

Hereafter, on motions for an injunction, because of the infringement of a patent-right, the complainant shall not be permitted to give evidence to rebut the cause shown by the defendant against the allowance thereof, other than to a denial that the defendant uses the discovery or invention claimed by

the complainant, or to a claim by the defendant that he acts under an assignment or license from the patentee; and, on motions for injunctions to stay waste, only to a defense set up justifying the waste; and, in neither case shall such suppletory or supporting proofs be received, unless the court, or one of the judges, on satisfactory cause shown, shall, by order previously made, allow the same to be given; and so much of Rule 107, of the standing rules in equity of this court adopted April 28th, 1838, as may be inconsistent herewith, is repealed.

Motions for injunctions shall be brought on by the complainant on the day named in the notice, if the court is then in session, and in default thereof, the defendant may move that the notice be discharged for the term, with costs, unless further time is given, or the hearing is delayed by order of the court.

Abatement of Actions.

APRIL 1st, 1850.

No action, real or personal, shall abate by the death, marriage, or other disability of either party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, marriage, or other disability of a party, the court, on motion may allow the cause to be continued by or against the successor in interest, on the usual notice to the party interested, or such other notice as may be directed by the court.

Commissioners to take Affidavits, &c.

OCTOBER 10th, 1850.

The clerk of this court, and the clerk of the district court of the United States for the southern district of New York, and also the chief clerk or deputy of each of said clerks, and also the county judge of each of the counties within the southern district of the State of New York, and also the standing masters in chancery appointed by this court (such officers respectively being of the degree of counselor at law, of this or of the supreme court of the State of New York), shall each be, *ex officio*, and is hereby appointed by this court, a commissioner of this court, to take affidavits in civil causes depending in the courts of the United States, and to execute and perform all the powers conferred by the act of Congress entitled, "An Act in addition to the Act entitled, 'An Act to establish the judicial courts of the United States,'" approved March 2d, 1793; and the act of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," approved February 20th, 1812; and the act of Congress entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" approved March 1st, 1817; and the act of Congress entitled "An Act further supplementary to

an Act entitled 'An Act to establish the judicial courts of the United States,' passed the 24th September, 1789," approved August 23d, 1842; and the act entitled "An Act to amend, and supplementary to the act entitled 'An Act respecting fugitives from justice and persons escaping from the service of their masters,' approved February 12th, 1793," approved September 18th, 1850.

The Same.

JANUARY 20th, 1851.

The clerk of this court, and the clerk of the district court of the United States for the southern district of New York, and also the chief clerk or deputy of each of said clerks (such chief clerk or deputy being designated in writing by the clerk appointing him, and the appointment being approved by the circuit judge of this circuit, or, in case of his absence from the district, by the district judge, and such designation, with the approval indorsed thereon, being filed in his office by each of the said clerks respectively), and also the standing masters in chancery appointed by this court, and also the county judge of each county within the southern district of New York, other than the county of Kings and the city and county of New York (if the said officers before named shall be each of the degree of counselor at law of this court, or of the supreme court of the State of New York), whether said officers are in office at the time of making this order, or shall be subsequently appointed or elected thereto, shall be, while holding such office, *ex officio*, commissioners of this court, and each of such officers, whilst in office is hereby appointed a commissioner to take affidavits in civil cases, depending in the courts of the United States, and to execute all the powers and perform all the duties authorized or conferred by the act of Congress entitled, "An Act in addition to the Act entitled 'An Act to establish the judicial courts of the United States,'" approved March 2d, 1793; and the act of Congress entitled, "An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," approved February 20th, 1812; and the act of Congress entitled, "An Act in addition to the Act entitled, 'An Act for the more convenient taking of affidavits and bail in civil causes depending in courts of the United States,'" approved March 1st, 1817; and the act of Congress entitled, "An Act further supplementary to an Act entitled, 'An Act to establish the judicial courts of the United States,' passed the 24th September, 1789," approved August 23d, 1842; and the act entitled, "An Act to amend and supplementary to the Act entitled, 'An Act respecting fugitives from justice, and persons escaping from the service of their masters,' approved February 12th, 1793," approved September 10th, 1850; or of any other act of Congress having relation to such commissioners and their duties and powers.

Juries—How drawn.

JANUARY 29th, 1851.

Except as may be from time to time otherwise specially ordered by the court, when hereafter a *venire* shall issue pursuant to the standing rules of the court, for the purpose of summoning petit jurors to serve in this court, the marshal or other officer to whom such *venire* shall be directed, shall, with the clerk, or his deputy, repair therewith to the office of the clerk of the city and county of New York, and there, at least ten days before the return of such *venire*, in the presence of the said clerk of the city and county, and of the marshal, or other such officer, the clerk or deputy shall proceed, if the clerk of said city and county shall consent thereto, to draw out of the box of jurors qualified, according as the law of the State of New York was on the 20th day of July, 1840, to serve in the highest court of law thereof, kept by the clerk of the said city and county, the names of so many jurors as by the said *venire* shall be required to be summoned. And the clerk of this court shall immediately make out and certify under his hand a panel of the jurors so drawn, with their respective additions and places of abode, and deliver the same to the marshal or other such officer, and the persons so certified shall be summoned to serve as jurors pursuant to such *venire*; and, if any of the persons whose names are so drawn shall be dead, or removed from the city and county, or not qualified as aforesaid, within the knowledge of the clerk or marshal, then such names shall be disregarded, and the clerk shall forthwith proceed to draw out of the said box other names, until the said panel shall be completed.

Whenever the court shall order petit jurors under such *venire* to be taken wholly, or in part, from any county or counties within the district other than the city and county of New York, the panel or panels thereof shall be drawn, certified and summoned, in like manner as is directed in the preceding order or rule.

Reporter to be furnished Materials.

OCTOBER TERM, 1851.

Whereas, Samuel Blatchford, Esq., counselor at law, has been appointed reporter of the decisions of the circuit judge in the circuit courts of the United States, held in the second circuit thereof:

Ordered, That the solicitors, attorneys and proctors of said court, in case of motions for new trials, demurrers, writs of error, appeals in admiralty, and cases in equity, bringing on the argument, furnish the said reporter with a copy of the case, demurrer book, error book, apostles, including all proofs in the court below, and in this court, in the case, and of the pleadings and proofs in equity, as the case may be, at or before the commencement of the argument.

Commissioners given other Powers.

JANUARY 27th, 1853.

All and each of the commissioners appointed by this court, by order or rule, entered January 20th, 1851, to take affidavits in civil causes depending in the courts of the United States, &c., be, and the said commissioners are hereby, appointed and authorized to act as commissioners, and each of them is hereby appointed to act as a commissioner, under the provisions of the act of Congress entitled, "An Act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivering up of certain offenders," approved August 12th, 1848.

Grand Jury—When to attend.

MAY 7th, 1853.

The clerk shall issue a *venire* to the marshal for a grand jury to be in attendance at the commencement of each regular term of this court.

Money in Court to be Deposited.

SEPTEMBER 21st, 1859.

All money brought into court in any suits pending in this court shall be deposited by the clerk of the court in the United States Trust Company, upon such terms as shall be agreed between the clerk and the company and approved of by the court.

Juries—How Drawn.

NOVEMBER 11th, 1867.

It having been found impracticable to obtain jurors for the courts of the United States in this district from the jury boxes used by the authorities of the State of New York, in the city and county of New York, for the procuring of juries for the courts of said State, in said city and county, It is now ordered, that the clerk of this court and the clerk of the district court of the United States for this district, make out and file in the office of the clerk of this court, a list of persons to serve as jurors in the courts of the United States for this district, and that such list be made out in the same manner as, by the laws of the State of New York, the public officers charged with the duty of making out the list of jurors to serve as jurymen in the courts of said State, in and for said city and county, are required to make out such list. And it is further ordered, that the said clerks, from time to time, correct and revise such list, as they may deem it necessary so to do, to the end that such list may be made and kept, so far as practicable, in conformity with the laws of the State of

New York ; and it is further ordered, that, from the list so made and filed, grand and petit jurors shall be selected, and shall be drawn by lot, in accordance, so far as practicable, with the laws of the State of New York, by the said clerks, as from time to time the same may be ordered by the courts of the United States in this district, and a list of the persons so drawn, certified by said clerks, shall be attached to the writ or venire issued to the marshal for the summoning of such jurors ; and it is further ordered, that, as to all matters relating to the selecting, drawing, and swearing of jurors for said courts, the said clerks follow, so far as practicable, the provisions in respect thereto, contained in the laws of the State of New York.

And it is further ordered, that the order made by this court on the 29th day of January, 1851, in regard to the drawing and summoning of jurors, be, and the same is hereby vacated.

INDEX TO PRACTICE

	Page		Page
Abate, actions where not...	21, 22, 26	Aliens may apply.....	14
Absent debtor	40	Allegiance, oath of.....	15
" creditors, proof by..	35	Altering books.....	72
Abbreviations	88	Allowance of claim, form of order	180
Acts of bankruptcy	62, 63, 65	Amendments.....	17, 40, 43, 88, 94
Actions against assignee ..	5, 6, 22, 39	Amendatory act	80
" passed to assignees....	21, 26	Annulled proceedings..	18
Accommodation paper	101	Appeal.....	12, 13, 37, 92
Accounts—bankrupt's	22	Application—by whom	14
" of assignee.....	25, 44, 46	" for discharge.....	48, 50
" of assignee—form of..	147	" to set aside discharge..	55
" of assignee—notice of		Appointment of assignee.....	18
settlement.....	145	" notice to assignee	
" of assignee to be audit-		of	86
ed.....	44, 46, 85	" notice by assignee	
" of assignee to be filed..	46	of	23
" of register.....	10	" of trustees—order	
Act takes effect	79	for.....	174 <i>et seq.</i>
Adjudication of bankruptcy...	68, 69	Appearance.....	15, 69, 84
" on creditor's peti-	85, 112	Approval of assignee.....	18, 19
tion, form..	167 <i>et seq.</i>	Arbitration—when	27, 90
" may be opposed..	67, 68	Arrangement.....	69 <i>et seq.</i>
Adjournment first meeting.....	18	Arrest—protection against..	41 <i>et seq.</i>
" final meeting, ex-		" of bankrupt—when..	41, 43, 66
amination pend-		Assent of creditor.....	52, 80
ing.....	51	Assignment with intent to de-	
" of issues into court..	9, 11	fraud.....	57, 58, 63, 64
" to be only for good		" without intend to de-	
" cause.....	85	fraud	24, 58, 64, 65
Administrator, title as.....	22	" to assignees, form..	125
Advertisements.....	16, 23, 48, 67	" provisions concern-	
Additional assignee.....	18	ing.....	20, 21, 23
" names of creditors..	43	" to trustees.....	175 <i>et seq.</i>
Agent—carries on business,		" relation back of..	20, 23
where.	17	" to be recorded.....	23
" for creditor, proof by..	35, 131,	Assignee—choosing of....	18, 19, 59
" property held by bankrupt	132	" additional.....	18
as.....	22, 24	" qualifications of.....	19, 20
Affirmation included in oath....	78	" approval of.....	19
Affidavit by assignee	146	" notices of appointment..	86,
		123	
		" bond of.....	19, 124

	Page		Page
Assignee—general duties of . . .	21-28, 44-46, 51, 59, 64, 75-90	Bankrupt—petition for discharge	
“ fees and compensation . . .	45, 47, 77	“ of	159
“ suits against	7, 22	“ when to be discharged . . .	54
“ punishment of	28 <i>et seq.</i>	“ specification of objec-	
“ vacancy in office of	28	“ tions against	160
“ removal of	19, 20, 27, 29, 148, 149, 150	“ books of account of . . .	22, 52
“ death of	26, 28	“ notice of examination	
“ order for new election . .	151	“ of witnesses	42
“ <i>et seq.</i>		“ penalties against	72
“ memorandum of choice of	122	Bankrupt law—interference with	
“ evidence of title of . . .	22, 26	State law	6
“ sales by	90	Bankruptcy—second	52
“ order for sale	178	“ involuntary	62
“ takes subject to lien . . .	23	Banks—deposits in	26
“ petition of, to relieve		Bail—debt due by bankrupt as .	30
“ from lien	152	“ for bankrupt, when to prove.	30
“ survivorship of	28	Banker—stopping or suspending	63
“ when to determine divi-		Bad debts	46
“ dends	45	Bills, &c., to be returned	37
“ includes plural	78	Books of account of bankrupt .	22, 52
“ return of no assets, form .	145	“ falsifying	72
“ notice settlement of ac-		“ trader not keeping	52
“ counts	145	“ production of	10
“ affidavit of	146	“ schedule of	107
“ order for settlement of . .	148	Bond of register	8, 116
“ form of accounts of . . .	147	“ of assignee	19, 123
Assimilated jurisdiction	79	Breach of trust not discharged .	54
Assent of creditor	52, 55, 80	Causes of action pass to assignee	21
Assets—when to be collected . .	25, 26	“ Carrying on business” . . .	14, 16, 17
“ what constitute	17	Certificate—costs on	11
Attachments dissolved	20	“ as to what question	
Attorney's fees not entitled to		“	9, 10, 11
priority	48	“ form of	157
Attorney—creditor may act by .	37	Choice of assignee	18
“ proof by	131, 132	Chattel mortgage, when valid . .	21
“ letter of	131	Christmas	79
Auditing accounts	44, 46, 85	Choses in action—schedule . . .	104
Bankrupt not subject to arrest .	41, 42, 43	Check, how signed	92
“ “ “ except	66	Circuit court	6, 7
“ when to attend before		Citizen's oath of allegiance . . .	15
“ register	84	Clerk of court—duties	83, 84
“ indebted as bail	29	“ fees of	78, 93
“ examination of	39, 40	Claims	29 <i>et seq.</i>
“ “ order for	153	“ compounding	27, 89
“ oath of	50	“ proof of, to be sent assignee .	36
“ oath to assignment to		“ proof of	36
“ trustees	176	Claim for damages—property . .	17
“ to convey, when re-		Claims purchased by debtor to	
“ quired	23, 40	“ bankrupt	31
“ subject to order of court .	40	“ disputed, how settled . . .	33
		“ order for diminution of . .	179
		“ “ expunging or	
		allowing	180

	Page		Page
Claims—appeal to sustain	181	Counsel to witness	41
Clerk—where carries on business	16	Custody, debtor held in	42, 63
“ priority of debt due	43	Creditors—notice to	16
Copartnership proceedings... 59 <i>et seq.</i>		“ bill, when lien	24
“ creditors under in-		“ choose assignee	18
dividual petition		“ list of	120, 142
“	31, 45	“ may remove assignee	27
“ estate,	59	“ petition, &c. 63 <i>et seq.</i>	
“ petition by	108	“ “ adjudication,	
Commencement of proceedings		&c.	167
“	14, 62, 84	“ priority	60
Concealment of debtor	62, 65	“ meetings..16, 18, 19, 44, 45	
“ of property	51, 62, 72	“ having security... 19, 37	
“ of books	72	“ proofs by...19, 32, 34, 35,	
Confession of judgment	63, 65	36, 59, 129 <i>et seq.</i>	
Contested issues	9, 11	“ vote, when	18, 19
Contemplation of bankruptcy: .63, 65		“ act by attorney	37
“ of insolvency	52, 57,	“ proving, waives lien,	
63, 65		&c.	31 <i>et seq.</i>
Corporation included in person ..	78	“ cannot enforce prov-	
“ may petition	60, 61	able claims	33
“ petition by	110	Creditor contracting to forbear	
“ proof by	35, 130	opposition	58
“ not to receive dis-		to prove affirmatively	
charge	61	his objections	51, 53, 68
“ order for sale of		may attack discharge,	
property of	178	&c.	55
Conveyance—fraudulent	57, 58,	Creditors—what to share.. 43 <i>et seq.</i>	
63, 72		“ to determine division	
“ with intent to de-		of estate	44
lay	63, 64	“ may nominate trus-	
Confederate debts	30	tees, &c.	69
Commissioner United States	34, 81	Damages, claim for, property ...	23
Contracts to forbear opposition ..	58	“ unliquidated, how as-	
Commissions to take testimony ..	62	essed	30
Conditional liability	29	Days of attendance of register ..	85
Contingent liability	29	“ meetings of creditors	16, 18,
Compensation to assignee	27, 45,	19, 44, 45	
47, 77		“ sitting	85
Controversy—assignee to settle	27	“ “ fee for	78
Compounding claims	27, 89	Dates and depositions	61
Conveyed by	24	Deeds to be executed by debtor	23
Copy of assignment to be filed ..	22	Destroying books, &c.	72
Conversion of goods, debt for ..	29	Deceit is fraud	55
Columbia, district of	79	Debtor—concealing himself	62
Costs on certificate	11	“ penalties on	72
“ on contested adjudications	94	“ imprisoned, how exam-	
“ contempt	12	ined	40
“ involuntary proceedings ..	68	“ oath by	50
“ appeal	38	“ petition for discharge ..	48,
Contempt	5, 12, 29, 40, 42, 62	50, 158	
“ register not to commit	9	“ when to be arrested ..	41, 42
Counsel to bankrupt as assignee	20	“ subject to order of court	40
Court seal, forgery of	73	“ death of	18
Courts of bankruptcy	5, 6, 7		

	Page		Page
Debtor—order finding, not bank-		Distinct—estate to be kept . . .	26
rupt	171	Dividend, how made . . . 33, 44 <i>et seq.</i>	141
" discharge from arrest . .	43	" notice of 27, 45,	141
" " from debts.	41,	" memorandum of	140
49, 54		" list of debts for. . . 142,	143
Debt provable	29 <i>et seq.</i>	Different districts, petitions in. .	60, 88
" how proved 32, 35,	57, 59	Disbursements of assignees . . .	27
" forms for proving . . . 129 <i>et seq.</i>		Disputed title	39
" list of 36, 142		" claims, how adjusted. .	33
" outstanding	46	Distribution of estate 43 <i>et seq.</i>	
" not discharged 54, 55		Dockets to be kept 9, 83	
" discharged 29, 30, 55		" to be open to inspection	84
Deposited, money to be 26,	92	Documentary evidence, disposi-	
Delay by bankrupt	33	tion of	38
" intent to	64	" produc-	
Defalcation in office by bankrupt	54	tion of	10
Deficiency on mortgage	24	Documents, falsifying	72
Departing from district, &c. . . .	62	Election, by proving debt	32
Demand for trial	67	" by assignee	22
" form of 172		Embezzlement, debt for	54
Death of debtor	18	Enjoined, who may be 33,	34
" not to abate pro-		Equity of redemption	21
ceedings	18	Estate taken by register	23
Death of assignee	26	" " marshal	66
" not to abate		" to be kept distinct	26
suits	22	" when invested	26
Depositions by creditors 34,	61	" distribution of	43
" forms for . . . 129 <i>et seq.</i>		" order for sale of, form . . .	178
" fees on	10	Evidence of title of assignee 22, 23,	26
" of witness to act of		" of fraud	58
bankruptcy	165	" documentary, returned. .	38
District—jurisdiction confined to	6	" generally . . . 39, 41, 61, 62,	
" court, jurisdiction	5, 6	71, 86	
" " control over State		Extortion by officer	73
courts	34	Examination . . . 39, 40, 41, 42, 62,	71
" " clerk's duties	83	" fees on 10, 41	
Discharge from arrest	43	" forms on 153 <i>et seq.</i>	
" petition for 48, 50		" may be adjourned. .	42
" form of notice of . . . 159		" of papers by regis-	
" petition to set aside. .	55	ters	85
" when granted. . . 51, 54, 71		Exemptions . . . 20, 21, 24, 25, 66,	106
" objections to 41, 49,		Executions—when lien	24
50, 53, 91		False statement by bankrupt. .	49, 41
" no, to corporations . . .	61	False swearing	12
" when refused 41, 49,		Factor—property held as	22
51, 71, 88		Falsifying books	72
" contract to forbear op-		Fees 9, 10, 41, 47, 66, 74, 75,	76
position	58	77, 78, 93	
" form of	53	Fifty per centum	55
" effect of 17, 55		First meeting of creditors . . 16,	18, 19
District of Columbia—courts in	79	Firm debt—how stated	36
Diminution of claim, order for	179	Final dividend	46
Disallowing claim, form for . . .	180	Fiduciary debt	54
" " appeal	181		
Distinct contracts	33		

	Page		Page
Fictitious debts or losses.....	72	Interpretation of words.....	78
Filing of papers.....	53, 85	Indictment against bankrupt....	72
Forgery of officer's signature....	73	Issues contested—course on....	9, 10, 11, 87
Forms may be varied.....	94	“ “ certificate of..	157
Forms for injunction referred to	18, 34	Joint debtors.....	59
Fourth of July.....	79	“ “ with bankrupt....	54
Forging court seal.....	73	“ stock companies.....	60
Fraud—debt created by....	54 <i>et seq.</i>	“ estate.....	45, 59
“ <i>prima facie</i> evidence of..	58	Jurisdiction of the several courts	5
“ examination as to.....	42	“ “ superior and exclu-	6, 7
Fraudulent conveyance....	24, 57, 72	“ sive.....	6
“ pledges and prefer-		“ confined to district..	6
ence.....	57 <i>et seq.</i>	Justice has power of court...	5, 6
Fraud not ground of opposition	52	Jury—demand of.....	67, 172
“ not extinguished by judg-		“ fees.....	78
ment.....	55	“ order for trial by.....	173
Further dividend.....	46	Judgment—effect of on fraudu-	
Furniture—when exempt.....	20	lent debt.....	55
Gaming affects discharge.....	50	“ confession of.....	63, 65
“ when an offense.....	72	“ on certificate, when	
General Orders.....	3, 14, 83	final.....	11
General assignment....	24, 58, 64 <i>et seq.</i>	“ no lien.....	23
“ Given”.....	18	Knowledge previous to discharge	
Gifts—when fraudulent....	57 <i>et seq.</i>	by creditor.....	56
Goods set apart.....	20	Last day included, except.....	78
“ conversion of.....	29	Leases.....	14
<i>Habeas corpus</i>	43, 92	Legal title only in bankrupt....	17, 24
“ His creditors”.....	65	Letter of attorney—form of....	121
Hindering assignee.....	72	Levy on execution.....	24, 32, 67
Injunction—form of order refer-		List of debts.....	120, 142, 143
red to.....	18	Limitation—statutes of....	17, 30, 56
Injunction—form of, referred to..	34	“ of suits against assign-	
Instruments to be executed by		nee.....	7
debtor.....	23	Liens.....	22, 23, 24, 32, 67
Insolvency—contemplation of..	52, 57	“ may be waived.....	31
In prison when act of bankruptcy	63	“ when redeemed.....	22, 24, 89
Imprisoned debtor—how exam-		“ petition to redeem.....	144
ined.....	40, 92	Lying in prison.....	63
Individual creditors—how prefer-		Lost will, affidavit, &c....	135 <i>et seq.</i>
ferred.....	17	Losses—fictitious.....	72
Intent to delay.....	64, 65	“ in gaming.....	50, 72
Influencing selection of assignee	17	Liability—conditional, contin-	
Influencing creditor.....	52	gent, &c.....	29
Interference with State laws....	6	Limitation of proceedings to at-	
Investment of estate.....	26	tack discharge.....	56
Inventory of property.....	15, 102	Marshal made messenger.....	16, 113
Interval before first meeting....	16, 17	“ duties of...	16, 40, 42, 66, 68, 81
Interlineation.....	88	“ fees of.....	75, 77, 78, 87
Involuntary bankruptcy....	62, 66, 67, 68, 69		
“ “ forms			
on.....	161 <i>et seq.</i>		

	Page		Page
Marshal—extortion by	73	Oath includes affirmation.....	78
“ includes deputies.....	78	Objections to testimony.....	42
Meaning of words.....	78	“ by creditor.....	51
Merchant stopping or suspending	63	“ specifications of...53, 160	
Memorandum by register...86, 118		Obedience—how enforced.....	6
“ <i>et seq.</i>	122	Offenses.....	72, 73
Messenger includes assistants....	78	Officers—penalties on.....	73
Meetings of creditors.....16, 18, 19		Opinion of judge.....8, 9, 10, 11, 12	
“ not held in time.....	47	Omissions.....	40, 94
“ to elect new assignee.....27, 151		Operation of act.....	55, 79
“ form of request for 2d	138	Orders by registers.....	86
“ memorandum of, for dividends.....	140	<i>Onus probandi</i>	51, 53, 68
Mesne process.....	25	Opposition to discharge....41, 49, 50,	
Minute books.....9, 84		“ contract to forbear... 53, 91	
Misdemeanor	73	Order to show cause involuntary	166
Money to be deposited.	26	Order of discharge—when....53, 34	
“ when exempt.....	25	“ “ petition for... 48	
“ when represents property.....23, 25		“ “ opposition to... 53	
Mortgaged premises—when to be sold.....23, 31, 32		“ “ may be pleaded 55	
Mortgage—when valid. .21, 31, 32, 64		“ “ under second	
Mutilating books.....	72	“ “ bankruptcy.. 52	
Mutual debts.....	31	“ “ does not release	
Motion to set aside assignee....	29	“ “ joint debtors... 54	
Name—variation in.....	17	“ “ after one year... 55	
National Bank lien.....24, 32		“ “ how made and	
Newspapers—how selected...17, 48		“ “ enforced....6, 7	
Necessaries exempt.....	20	“ of reference to register... 17	
Notices—first meeting.....	16	“ form of, general... 117	
“ second meeting.....	44	Outstanding debts.....	46
“ appointment assignee.. 23		Payment of fees.....9, 10, 41, 75	
“ 86, 123		Papers—falsifying... ..	72
“ sale.....	90	Party may obtain opinion of	
“ dividends.....27, 45		judge.....11, 12	
“ filing accounts.... 44		Papers may be amended.....	18
“ application for discharge.....48, 159		“ production of.....	10
“ application to annul		“ filed and indorsed....17, 83	
“ discharge	56	Partners—petitions by, and against	
Non-resident creditors, proof by	35	59, 60, 89, 108	
No assets.....50, 51		Partnership debt—how stated... 36	
“ returns of.....	145	Payment of dividends....44, 46, 47	
Oath of register.....8, 115		“ fraudulent.....57, 72	
“ of bankrupt.....	50	“ when act of bankrupt-	
“ to schedules.....	108	cy.....	63
“ administered by register..10, 81		“ when assignee to re-	
“ by witness on examination 154		cover.....58, 63	
“ of allegiance.....	15	“ of money.....	92
“ of assignment to trustees.. 176		Partnership property—exempt or	
		“ not....24, 25	
		“ “ distribution	
		“ of.....	60
		Permitting to be taken, &c.....	63
		Penalties against bankrupt....	72
		“ “ officers.....	73

	Page		Page
Person includes corporation . . .	78	Proof of debt . . . 29, 32, 34, 35, 36, 59	
Petition, how written	88	“ forms for . . . 130 <i>et seq.</i>	
“ contents of 15, 60, 64		“ cannot be with-	
“ forms for 96, 108, 110		“ drawn 31	
“ to be filed 17		“ amendment of 31	
“ to be referred to regis-		“ postponement of 37	
ter 17, 84, 111		“ refusal of 32	
“ form of, to relieve from		“ refusal appealable 37	
lien 144		“ waives what . . . 31, 32, 33	
“ instead of appeal, when	6	“ to be sent to assign-	
“ for discharge 48, 50, 158		nee 36	
Perishable property 38, 91		Procuring property to be taken	63
Pending actions 22		“ &c., ground	
Pledge valid, when 22, 31		“ for oppo-	
Pledgee, proof by 32		sition 49	
Plea by debtor 68		Publication first meeting 16	
Power of register 8, 9, 10,		“ appointment assignee 23	
11, 12, 85		“ notices sale 27, 39, 46	
Power of attorney 35, 36, 121, 134		“ dividend 44	
Power of assignee over estate 21		“ in foreign papers 17	
Postponement of proof 37		Punishment of assignee 28	
“ first meeting 18		“ of bankrupt 40	
“ final meeting 51		Qualifications of register 8	
“ examination, &c. 85		“ of assignee 19	
Prison, lying in 63		Questions 53, 68	
Provable debts, what 29, 30, 31		“ to be adjourned, what	
“ not enforceable,		10 <i>et seq.</i>	
when 33			
Property, what 17, 23		Refusal to answer, by witness 9, 12	
“ conveyed in fraud 24,		“ to obey, by bankrupt 12, 40	
57, 63		Receiver on creditor's bill, lien	
“ perishable 38		of 24	
“ in dispute 39		Reference of petition 17, 84, 111	
“ form of order for sale		“ to take testimony 62	
of 178		Rent 30	
“ assigned, what 21, 23, 24		Revenue stamps 17, 64	
“ belonging to third per-		Residence 14, 16	
sons 24		“ of assignee 19	
Priority of creditors' petitions 60, 88		Resignation of assignee 27	
“ in payment of debts 43,		Removal of assignee 19, 20, 27	
47, 48		“ forms on	
Process 39, 84		148 <i>et seq.</i>	
Pledging goods 57 <i>et seq.</i>		“ of register 17	
Proceedings, when commenced 61		“ of property 63	
“ how commenced 14,		Relation back 20, 23	
63, 84		Return by assignee of service of	
“ how annulled 18, 66		notices 139	
“ are matters of record 62, 85		Record of assignment 23	
“ evidence of 62		“ of proceedings 62, 85	
Preferences within four months	57	Reasonable cause 32, 57, 58	
“ legal, when 17		Replication 58	
Present value 29		Request for second meeting—	
Preferred creditor 37		form 138	
Protection 8, 11, 42, 85		Redemption of property 22, 31, 89	

	Page		Page
Right to restrain no lien	24	Seizure, warrant for involuntary.	168
Register—appointment of	7	Second meeting	44, 45, 91
“ qualifications of	8	“ bankruptcy	52
“ bond of	8, 116	Secreting estate	72
“ oath of	8, 115	Ships, mortgages on	21
“ form of order of reference to	111	Sitting, a day to be six hours	85
“ may take estate	23	Specification of objection to discharge	53, 160
“ cannot act as attorney	9	Special order	76
“ fees of . . 74, 75, 76, 87, 93	93	State courts not to be enjoined	34
“ fees paid by whom	9, 10, 75	State insolvent laws affected	6
“ “ to be directed by court	10	Staying suits	33, 34
“ to be furnished with signed process	84	“ form of order referred to	34
“ powers over witnesses	10, 86	Stoppage or suspension	63, 65, 66
“ powers generally . . 8, 9, 10, 11, 12, 85	85	Statute limitations, effect of	17, 30
“ subject to removal	11	Stamps, revenue	17, 64
“ subject to change	17	Suits against assignee	7, 22
“ to examine papers	85	Suffer	52, 65
“ may order amendments	43	Surviving assignee	28
“ signs warrant	16	Suspension	63, 65, 66
“ contents of orders by issues order for final meeting	50	Surety, proofs by and against	29
“ may postpone proofs of debt	37	Supreme court, appeal to	13
“ memoranda to be made by	86	Sunday	79
“ memoranda, forms of	119, 122, 142	Suits pending	22, 26
“ to make list of debts	51	“ when stayed	33, 34
“ may take opinion . . 8, 9, 10	10	Subpoena	12, 84
“ not to commit for contempt	9	“ forms for, &c.	155 <i>et seq.</i>
“ to administer oaths, when	10, 81	Taxes, national and State	38
“ files all papers	53, 85	Testimony to be taken	39, 41, 61, 62, 71, 86
Sale of estate	25, 31, 32, 38, 39, 90	Territorial courts	79
“ order concerning	178	Thanksgiving	69
“ fraudulent	63, 72	Third meeting	45, 91
Schedules, what	15	Time to appeal	12
“ amendment of	40	“ to attend before register	17
Seal of court, forgery of	73	“ for first meeting	17
Service of notices	16, 18, 41, 67, 69, 91	Title of assignee to estate	22, 26
Set-off	31	Time, to attack discharge	56
Security, creditors having	37	“ computation of	78
Setting apart delayed, when	25	Traveling fees	10, 75 <i>et seq.</i>
Servants, wages of	43, 48	Trust property in hands of bankrupt	17, 22, 24
		Trader	52, 63, 65
		Trial	53, 67, 68
		“ demand of order for	172, 173
		Transfer of property	57, 63
		Trustees	69, 70
		“ forms on appointment	174 <i>et seq.</i>
		“ advertisement on, form	177
		Unknown facts, allegation	17
		Unliquidated damages, assessment	30

	Page		Page
Usurious debt, provable.....	31	property formerly of bank-	
Uniform, arms, &c:.....	20	rupt.....	51
Vague averments insufficient...53,	56	Wife—cover for bankrupt's prop-	
Vacancy in office of assignee....	28	erty.....	51
Varied, forms may be.....	94	“ examination of.....	40, 41
Validity of discharge, contest-		Witness, examination of, ..10,	12, 40,
ing.....	56		41, 62
Variation in name.....	17	“ oath of, on examination	154
Vessels, mortgages on.	22	“ on claim of debt.....	36
Voluntary proceedings.....	14	“ punishable for contempt	12,
Vouchers of assignee.....	44		62
Warrant.....16, 39, 59, 66, 68		“ summons for and return	155
“ forms of, &c.....113 <i>et seq.</i>		“ entitled to protection..	12
“ of seizure, involuntary..	168	“ deposition to aot of	
“ to arrest bankrupt.....	68	bankruptcy.....	165
“ to confer judgment...63, 65		“ refusing to assignee...9, 12,	
Wages entitled to priority.....	48		39, 42
Wearing apparel exempt.....	20	“ fees of.....	41, 78
“Whether”.....	17	Writ of error	13
Wife, where <i>bona fide</i> owner of		Waiver of appeal.....	13
		“ of lien.....	31, 32
		“ legal remedy.....	33

INDEX

TO

RULES IN BANKRUPTCY FOR THE SOUTHERN DISTRICT OF NEW YORK.

	Page		Page
Assignee must accept within five days	187	Certificate of issue, what to contain	189
“ John Sedgwick, when to be	187	Clerks to make certified copy of assignment, and file same. 187	
“ to send assignment to clerk	187	“ to keep copies of advertisements, &c.	191
“ notice of appointment of	187	Checks—how drawn	190
“ notice of settlement of account	188	Court may permit oral argument on issues	189
“ when to file vouchers. 188		Deposits—in what banks	189
“ when to keep copies of advertisement, &c....	191	“ how drawn	190
Advertisement, sale	187	Demand for jury trial—how signed	188
Annulling discharge, application and answer	188	Debtor or attorney to sign demand	188
Advertisements—copies to be kept	191	Discharge—application to annul ..	188
Absence of judge	191	“ answer to application ..	188
Adjournment, because of absence ..	191	Direction on notices	191
Adjudication in involuntary proceedings to refer, &c.	184	Examination of papers	185
Attendance before register—day of	184	Envelopes not to be used	191
“ day of to be designated by register....	184	Fees to register	185
Argument—oral, when	189	Hearing	188
Attorney—when to sign demand for trial	188	“ when judge absent, cause on	191
Banks for deposit	189	Issues—certified, what to contain	189
Certificate—correctness	185	Judge—absence of	191
		Jury trial demanded, how signed	188

	Page		Page
List of debts to be certified.....	188	Register—to designate day of attendance	184
Marshal to keep copies of advertisements, &c.....	191	“ fees to.....	185
“ special deputies of.....	191	“ to examine papers.....	185
Notices—how published....	186, 187, 190	“ to make certificate of correctness on papers	185
“ copies to be kept.....	191	“ may postpone proofs of debt.....	186
“ when printed, marshal's charges	186	“ to countersign assignee's warrants.....	190
“ how printed and folded ..	191	“ to give his opinion, when.....	188
“ of dividends.....	187	“ to certify list of debts..	188
“ of trials ..	188	“ to keep copies of advertisements, &c.....	191
“ of settlement of assignee's accounts.....	188	Reference of petitions—to whom	183
Newspapers—what.....	187, 190	“ adjudication in involuntary proceedings to contain.....	184
Opinion of register—when given	188	Sale—notice of.....	187
Oral argument—when.....	189	Sedgwick, John—when assignee	187
Petitions—to whom referred....	183	Special deputies.....	191
Proofs of debt to be sent to assignee	186	Trials—where.....	188
“ “ may be postponed.....	186	Verification—when.....	188
Publication notices.....	187, 190	Voucher by assignee.....	188
Post-marks, &c... ..	191	Warrant—to contain.....	186
Register—to what, petitions referred.....	183	“ for money, how drawn	190

INDEX

TO

CIRCUIT COURT RULES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND CIRCUIT.

COMMON LAW RULES.

Page	Page
Action, order to show cause of.. 197	Bond for costs..... 203
Abatement of actions..... 222	Calendar, when to be made up 203
Affidavits, before whom...212, 220, 222, 223, 225	Caption of pleadings 197
Agreements to be in writing.. 209	“ of judgment records... 207
Amendment of pleadings..... 198	Certificate of counsel to pleas or demurrers 198
“ of case205, 206	Case made, to set aside verdict.. 205, 206
Agents, of attorneys..... 199	“ subject to opinion of the court..... 206
“ service upon 199	“ turned into bill of exceptions, &c..... 206
“ appointment of... .. 199	Cause of action, order to show.. 197
Assessment of damages..... 197	<i>Certiorari</i> for diminution..... 209
Assignment of errors..... 208	Clerks of counties..... 219, 220
Appearance of defendant, what sufficient 195	Commencement of suits..... 193
Appeals from taxation of costs.. 211	Commissions to take testimony, rules in relation thereto.. 200, 201, 202
Attorney, when liable for costs.. 209	Computation of time 200
“ how admitted 210	Consents to be in writing 209
Argument—papers furnished on 202	Continuances abolished 207
Bail, when to be taken of course 194	Commissioners appointed...212, 220, 222, 223, 225
“ when by order of judge.. 194	Costs, upon commissions for taking testimony..... 201
“ amount of 194	“ where too great bail is required 194
“ penalty for requiring too great an amount of.... 194	“ attorney, when liable for security for..... 203, 209
“ when to be put in..... 194	“ on payment of money into court without plea of tender 209
“ exception to, and justification and perfection of 194, 195	“ by whom taxed 210
“ waiver of..... 195	“ what motions do not carry 210
“ assignment of bail bond.. 195	
“ terms of staying proceedings in suits on bail bond 195	
Bill of exceptions, <i>per se</i> , a stay of proceedings 206	
when and how to be made up 206	

	Page		Page
Costs of attorneys, what allowed	211, 221	Marshal's return of panel.....	205
Criminal cases, division in.....	207	Monies in court, where to be deposited.....	225
Default, upon what terms to be waived.....	197	Motions—what to be made before the court.....	200
“ rule for judgment on..	197	“ what before a judge..	200
“ for not bringing on cause when called on calendar.....	210, 211	“ what do not carry costs.....	210
Death of party, proceedings on..	203, 204	“ for new trial after judgment.....	206
Division of opinion	207	Notices—to be in writing, and how to be served	198, 199
Diminution, <i>certiorari</i> for.....	209	“ when on agent, when put up in the clerk's office.....	199
District court rules adopted.....	211	“ time of notice.....	199
Error, proceedings on writ of..	208, 209	“ what may be given by either party.....	200
Exceptions, bill of, when and how to be made up...	206	“ of proceedings before a judge <i>out of New York</i>	211
“ may be used on motion for a new trial	206	“ of motion.....	200
Execution, sale of real estate under.....	207	New trial after judgment, motion for.....	206
“ when returnable....	194	Notes of issue, when to be delivered to the clerk.....	203
Interrogatories	201	Nonsuit.....	202
Inquests, when and how taken..	197, 205	Objections to commissions.....	202
Issue, when formed.....	198	Orders to show cause of action, &c.	197
“ notes of, when to be delivered to the clerk....	203	Panel of jurors to be furnished by the clerk upon request.....	205
Joinder in error.....	208	Papers to be furnished to the court on argument.....	202, 221
Judgment on default.....	197	Payment of money into court without plea of tender.....	210
“ as in case of nonsuit	202	Placita of judgment records.....	207
“ when may be entered after permission to stipulate	202	Process—to be signed and sealed by the clerk.....	193
“ staying proceedings on.....	205	“ how tested, and returnable.....	193
“ rules for, when absolute	205	“ how long to be in marshal's hands to charge bail	194
“ placita of records of...	207	“ service of, where marshal is a party, or is interested.....	211
“ by whom signed.....	210	Pleas—when to be sworn, &c..	197
“ satisfaction of, before whom acknowledged	211	“ in abatement, when to be served.....	198
Jurors—venire for.....	204, 218, 219, 224, 225	“ amendment of.....	197
“ when to be summoned..	204	Real actions—form of.....	193
“ how many to be summoned.....	204		
“ whence to be obtained..	219		
Justification of sureties.....	200, 203		

	Page		Page
Real estate—sale of.....	207	Service of papers..	199, 200, 202, 211
Return to writ of error.....	208	Setting down cause, not allowed	211
Records to be signed.....	210	Stay of proceedings on judgment	206
Reporter to have materials.....	224	“ “ after commis-	
Rules—against the marshal.	194	“ “ sion	201
“ to be entered in vacation	196	“ “ how long in	
“ to declare, plead, answer,		“ “ force	209
or join in demurrer..	196	“ “ what oper-	
for default on judgment		ates as... ..	207
of <i>respondeas ouster</i> ..	197	Stipulation to try cause.....	202
for judgment on default. .	197	Summing up causes, order of... .	211
for commissions	201	Taxation of costs—by whom... ..	210
Redemption of lands sold under		“ “ appeals from .	211
execution.....	208	Time of notices, rules, &c.—how	
Return of commissions.....	202	computed.....	200
Sale of real estate.....	207	Venire for jurors.....	204, 205
<i>Scire facias</i> —rules in relations to		Waiver of default.....	197
proceedings by.....	196, 197	Writs.....	193
Security for costs.....	203, 218	Witnesses on commissions.....	202
Satisfaction of judgments—be-		Writ of error.....	208, 209
fore whom acknowledged . . .	211		
Service of process, where marshal			
is a party, or interested.....	211		

EQUITY RULES.

Adjournment by a master or ex-		porting proofs on	
aminer.....	214	motion for	212
Appeals, papers on	220	Injunction—evidence to sustain	
Deposition, proceedings on	213	221, 222	
Exceptions to testimony.....	214	Motions, before whom to be made	213
Enrolling of decree, when to be		Setting down cause upon plead-	
suspended.....	214	ings.....	213
Hearing on the pleadings.....	213	Supporting proofs.....	213, 222
Injunction, what papers to be		Testimony, oral, in court, prac-	
served on motion		tice, when to be	
for	212	taken	213
“ cause against order		“ in writing, how taken	213
for, how showed	212	“ time allowed for tak-	
“ suppletory or sup-		ing	213
		“ publication of	213
		“ exceptions to	214

RULES ON APPEALS.

	Page		Page
Allegations, showing cause against offering new.....	216	<i>Ex-parte</i> , when appellant may proceed	216
“ practice, when they are to be made..	216	Hearing, notice for.....	216
Answer, not to be put in on appeal	216	“ when	217
Appeal to be in writing, form of, when to be returned..	215, 221	<i>Inhibition</i> , writ of.....	216
“ service of, and return to	215	<i>Mandamus</i> , writ of.....	216
“ when return to, to be made.....	215, 216	Motion to enforce decree	217
“ to supreme court, proceedings on.....	217	New allegations or relief....	216, 217
“ when to be deemed in circuit court.....	216	Notice for hearing to be given by either party	216
“ when to be proceeded in	216	New proofs, opposition to.....	216
Decrees, what may be appealed from	214	Relief, practice, where new is prayed.....	216, 217
“ what are final	214	Service of appeals	215
“ when to be executed..	217	Testimony, practice when new is intended to be taken.....	216, 217
“ of district court, when appellee may move to have executed.....	217	“ in district court, when to be used.....	217
District court rules adopted	218	Writ of inhibition	216

TABLE OF CASES.

	Page		Page
Altenhain,	17	Clafin v. Wells,	64, 65
Appold,	23, 24, 45	Caldwell, Phelps & Co.,	19, 36
Arledge,	24	Camp,	67
Bashford,	52	Clairmont,	20
Bank, &c. v. Truax, &c.,	32	Cowperthwaite,	67
Burns,	33	Cowles, &c.,	64
Bellamy,	50, 51, 76	Carpenter,	42
Baum,	53	Cone,	64, 65
Bornstein,	67	Craft, &c.,	52, 64, 65
Boylan,	60	Corner v. Miller,	50
Bliss,	19	Cobb,	24
Beiser,	24	Cram,	32
Beiser <i>ads.</i> Sedgwick,	24	Crowley,	64
Bailey,	17	Collins,	41
Blumenthal <i>ads.</i> Isidor,	41	Davis & Son,	19
Beardsley,	51	Donaldson,	34
Bridgman,	36	Devoe,	43, 55
Black,	52, 65	Drummond,	68
Bowie,	6, 34	Dodge,	50
Bolton,	19	Dean,	45, 76, 77
Blake,	42	Devlin,	17
Belcher,	16	Dunham,	32, 64, 65, 68
Bigelow <i>et al.</i> ,	24, 32	Ellis,	25, 66
Byrne,	17, 45, 60, 65	Ermer v. Miller,	79
Barrow <i>et al.</i> ,	6, 32	Florida, &c. R. R. Co.,	65
Bradshaw v. Klein,	24	Frear,	31
Beck,	34	Fredenburg,	12, 41
Brock v. Hoppock,	65, 68	Graves,	27
Cogswell,	18	Glasser,	10, 42
Campbell,	34	Griffin,	41
Commonwealth v. O'Hara,	6		
Clark,	76		

TABLE OF CASES.

243

	Page		Page
Gettleston,	9	Loeb <i>et al.</i> ,	6, 32
		Leeds,	65, 66
Haley,	36	Lowenstein <i>ads.</i> Pennington,	
Hasbrouck,	23	Ass'e,	25
Hoppock <i>ads.</i> Brock,	65, 68		
Hill,	17, 18, 51, 53	Metcalf, &c.,	34
Hays,	17	McIntire,	51, 53, 56
Hughes,	53	Mackintyre,	10, 41, 43
Hatcher,	17	Morford,	43
Harden,	17, 30	Metzler, &c.,	67
Haughton,	64, 65	May, &c.,	25
Hummitsch,	51	Mott,	25
Hazleton,	43	Minck <i>ads.</i> Sedgwick,	24
Havens,	19	Milner,	30
Hirsch,	6	Mawson,	12, 51, 52, 53
Haver, &c.,	24, 34	McClellan,	32
Hughes <i>ads.</i> Irving,	34, 67	Milingar <i>v.</i> O'Hara,	6
Herschberg,	48	Morgenthal,	43
		Miller,	18, 66
Isidor <i>v.</i> Blumenthal,	41	Miller <i>ads.</i> Ermer,	79
Isidor <i>ads.</i> Stewart,	24, 31, 32	Moore,	31, 64
Irving <i>v.</i> Hughes,	34, 67	Magie,	16
		Merchants' National Bank <i>v.</i>	
Jacoby,	43	Truax, Adm'r.,	58
Jewett,	45	Meyers,	24, 34
Jones <i>v.</i> Leach,	23		
Judson,	41, 42	New York Mail Steamship	
Jersey City Window-glass		Co.,	29
Co.,	65	Noakes,	24
Jones,	37, 43		
		Orme,	17, 19, 23, 37, 43
Knoepfel,	36	Okell,	41
Kingsley,	17, 30, 56	O'Bannon,	17, 52
Klein <i>ads.</i> Bradshaw,	24	O'Brien,	7
Koch,	42	O'Hara <i>ads.</i> Commonwealth,	
Kimball,	42	&c.,	6
Levy,	41, 42, 53	Purves,	19
Loweree,	31, 36	Patterson,	9, 23, 41, 42, 55
Leach <i>ads.</i> Jones,	23	Pulver,	10, 12, 17
Lewis,	60	Puffer,	53
Little,	60	Perry,	20, 30, 43
Leachman,	41	Pettis,	43
Langley,	65, 79	Prankard,	60
Lawson,	25	Pomeroy,	52

	Page		Page
Phelps <i>et al.</i> ,	19, 36	Seckendorf,	42, 53
Place <i>ads.</i> Sedgwick,	24, 58, 65	Sheppard,	30, 36, 53
Pennington <i>v.</i> Lowenstein, &c.,	25	Stokes,	19, 29
Pennington <i>v.</i> Sale, &c.	23, 32	Salmon,	23, 32
Purcell, &c.,	24	Sturgeon,	10, 25
Princeton,	37	Sutherland,	68
Powell,	19, 36	Simpson,	55
		Sherburne,	69
Ray,	30	Strauss,	36
Reed,	7, 13, 34	Sale, &c. <i>ads.</i> Pennington,	23, 32
Robinson,	17, 76	Shields,	25
Ruth,	24		
Rankin <i>v.</i> F. A. & G. C. R. R. Co.,	65	Townshend,	51
Rathbone,	51	Tanner,	41, 42
Rosenfield,	42, 52	Thompson,	53
Ratliffe,	43	Tuttle <i>v.</i> Truax,	58
		Tallman,	42, 52, 53
Seymour,	34, 42, 43	Truax <i>ads.</i> Tuttle,	58
Stern,	18	Truax <i>ads.</i> Merchants' N. Bank, &c.,	32, 58
Shick,	65		
Schnepf,	32	Van Tuyl,	41, 42
Smith,	17, 24, 32		
Stewart,	23	White & May,	25
Stewart <i>v.</i> Isidor,	24, 31, 32	Walker,	16, 43
Son,	45	Waite,	64
Sherwood,	76	Wright,	10
Selig,	41	Winter,	6, 32
Secor, &c.,	52, 65	Wells,	64, 65
Sedgwick, Ass'e <i>v.</i> Beiser, &c.,	24	Woolums,	51
Sedgwick <i>v.</i> Place,	24, 58, 65	Winn,	23
Sedgwick <i>v.</i> Minck,	24	Walton,	45
Schofield,	10, 41	Wylie, Judge, Directions,	36

THE END.

